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SENATE CRIMINAL JUSTICE COMMITTEE

SENATOR JOHN WHITMIRE
Chairman
SENATOR JOAN HUFFMAN
Vice Chairman

December 15, 2010

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SENATOR RODNEY ELLIS
SENATOR GLENN HEGAR
SENATOR JUAN "CHUY" HINOJOSA
SENATOR DAN PATRICK

The Honorable David Dewhurst
Lieutenant Governor of the State of Texas
Capitol Building, 2nd Floor

Dear Governor Dewhurst:

The Senate Committee on Criminal Justice submits its Interim Report in agreement with the Interim Charges that were issued this past year. The Criminal Justice Committee has held hearings over the last year to gather information on these charges. The hearings have been well attended and informative. In compliance with your request, a copy of this report will be circulated to all senators and other interested parties.

As you are aware, the charges that you issued to the Committee were very comprehensive and challenging. We have worked hard to respond to this challenge by developing broad recommendations that will benefit all Texans in the years to come. We anticipate that the Committee's recommendations will provide a guide for fiscal and operational improvement in the Texas Criminal Justice System. We thank you for your leadership and support.

Respectfully submitted,

Senator John Whitmire
Chair

Joan Huffman
Vice-Chair

Senator Juan "Chuy" Hinojosa

Senator John Carona

Senator Glenn Hegar

Senator Rodney Ellis

Senator Dan Patrick



The Senate of The State of Texas

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December 10, 2010

The Honorable John Whitmire
Chair, Senate Criminal Justice Committee
P.O. Box 12068
Capitol Station
Austin, Texas 78711


Dear Chairman Whitmire:

Thank you for your diligent efforts as Chairman of the Senate Committee on Criminal Justice. I am honored to serve as Vice Chair, and I appreciate the hard work and research involved to produce the Criminal Justice Committee's Interim Report to the 82nd Legislature.

The Committee's recommendations provide options for improving public safety, services, and strive to reduce recidivism rates amongst all offenders. Due to my mid-interim appointment to the committee, I did not have the opportunity to participate in all of the hearings and discussions concerning these and other issues pertinent to ensuring a quality criminal justice system. I look forward to working together in a positive manner on these important state issues.

Again, thank you for your leadership and dedication.

Sincerely,


Senator Joan Huffman



Executive Summary

Recommendations charge one

Study the efficiency and fairness of the current sexual offender registry system and make recommendations to improve the system, if necessary. Study the issue of compliance with the Adam Walsh Act, focusing on the associated costs to the state and the punishment of juveniles. Examine the risk assessment tools used to measure the likelihood of recidivism among sexual predators.

Sex offenses are very serious crimes. There is no debate over whether violent and dangerous people should be punished monitored extensively. However like with most issues there are levels and gray areas. In addition there are limited resources to address all of the issues facing the state today. However, it is important to emphasis the fact that high cost does not negate public safety measures. Extensive research has been done on sex offenders and the affects of registration and other sanctions. Based on the research, the testimony provided during the hearing, it is clear registries do not provide the public safety, definitely not the way it is now. Add this to the recent stories in the media highlighting some of the issues and concerns it is the recommendation of this committee to:

1. Repeal Article 62.402 (A) and (B) of the Code of Criminal Procedure to enable Texas not to be bound to the federal minimum for registration requirements.
2. Establish a minimum standard for registration requirements, which include the current process for deregistration for those approved by the CSOT.
3. Not to implement AWA.
4. Require that all registered sex offenders have risk assessments done.
5. Continue working to improve communication between states regarding registered sex offenders who present a significant risk to community safety.

Recommendations charge two

Review statistics regarding the crime of driving while intoxicated, including accident statistics, alcohol-related deaths and injury, and other impacts on the community. Examine enforcement options used nationwide to deter driving under the influence and make recommendations to reduce the number of alcohol-related traffic fatalities and accidents in Texas.

Texas has "tough" laws governing DWI offenses and allows a great deal of flexibility for prosecutors to seek the appropriate level of sanctions and punishment. A current practice among prosecutors is to file intoxicated manslaughter cases as murder, thus raising the offense from a 2nd degree felony to a 1st degree felony, using the vehicle as a deadly

weapon. However, not all of the efforts in Texas have turned out to be "smart". Corrections to our current statutes and practices are demonstrated and the following are recommended by this committee:

1. Eliminate or greatly reduce the Driver Responsibility Program surcharges as they relate to DWI convictions. The increasing number of drivers who are unlicensed and uninsured is unacceptable.
2. Simplify and place into one statute the complicated and confusing automatic license suspension laws (ALR). Maintain in Texas law only those required by federal funding guidelines.
3. Remove from statutes barriers for Judges to utilize pre-trial intervention, deferred adjudication and probation sentences in DWI cases. Allow Judges to tailor the level of supervision and intervention required after professional assessment has been conducted. This would include treatment, supervision of occupational licenses and the use of available interlock and electronic monitoring devices.
4. Add to current statutes incentives for suspected DWI offenders for submitting to breath or blood test. At the time of a trial, if evidence is presented that a BAC of .15 or over is established, allow a 1st or 2nd DWI offense to be punishable at the next level.
5. Establish strict guidelines for the execution of search warrants for suspected DWI case blood draws. Place limitations on the level of force allowed to obtain samples and establish the professional certification level required for individuals who conduct these procedures.

Recommendations charge three

Review the performance of the *Fair Defense Act* and the Task Force on Indigent Defense. Study key outcomes of the law, including: appointment rates in felony and misdemeanor cases; state and county indigent defense expenditures; attorney caseloads; attorney compensation; access to investigators and experts; and overall quality of counsel for the indigent. Examine the Task Force on Indigent Defense's effectiveness in monitoring and enforcing standards and design strategies to improve the delivery of services for indigent defense, including timing of the appointment of counsel, the use of the appointment wheel and the monitoring of workloads and performance of attorneys.

Since 2001, indigent defense systems in Texas have dramatically improved. Despite great progress, Texas still ranks in the bottom ten nationwide in indigent defense spending. The committee recommends the following to enhance indigent defense systems across the state:

Since 2001, indigent defense systems in Texas have dramatically improved. Despite great progress, Texas still ranks in the bottom ten nationwide in indigent defense spending. The committee recommends the following to enhance indigent defense systems across the state:

1. Require the TFID to increase its incentives for jurisdictions to establish public defender offices.
2. Enhance TFID's ability to enforce compliance with the *Fair Defense Act* and track local indigent defense processes by improving data collection and transparency, including reporting on caseloads of appointed counsel and public defenders.
3. Require TFID to adopt policies and standards to improve indigent defense practices, including:
 - a. Standards for ensuring appropriate caseloads for counsel representing indigent defendants;
 - b. Working with the State Bar to develop performance standards for indigent defense counsel; and,
 - c. Standards for ensuring adequate payment for indigent defense services, taking different levels of cost-of-living across the state into account.
4. Allow counties to explore different methods of appointment, including managed assigned counsel programs (S.B. 1710, 81st). This would help to limit the public perception of bias within judicial appointment systems and provide local jurisdictions with more flexibility to implement programs which reduce bias and ensure high quality legal defense services.
5. Require counties to track indigent defense practices and meet performance measures of grants issued by TFID.
6. Require TFID to award more discretionary grant funds for programs that meet or exceed the requirements of the Fair Defense Act. This would promote better practices, more cost-effective solutions, and accountability in establishing and improving indigent defense systems.
7. Enhance the independence of the TFID by authorizing it to submit Legislative Appropriation Requests separate from the Office of Court Administration. Improve TFID's expertise in defense-related issues by adding two defense lawyer representatives to the Task Force, including a public defender representative.

Recommendations charge four

In reviewing the current status of municipal jails, many of the disturbing conditions that were noted in the "Report to the 69th Legislature on Municipal Jails" still exist today. This committee also agrees with a conclusion from that report that "While most municipal detention facilities are short term lockups they do deprive citizens of their freedom of movement and the owners of those facilities then become responsible for the safety and welfare of those individuals".

Relying on the good faith efforts of city governments, civil right lawsuits and police investigation after accidents or tragedy have not prevented the death while in custody

(Office of Attorney General Report) of 66 individuals in municipal lockups, during the last five years. Even given the fiscal restraints faced during the coming legislative session, Texas needs to take positive action to ensure the safety of prisoners and encourage compliance with best practices in the management of these facilities. This committee recommends amendments to the statute governing the TCJS to:

1. In order to determine the exact number of facilities, the specific type (holder, cell, locking bench) and who is detained, require registration of the jail with the Texas Commission on Jail Standards. Also within this registration require an annual report of the average number of persons detained per day and the average number of hours held prior to release and a description of how the facility operates. Each municipality should be required to report any and all such facilities within its jurisdiction.
2. Adopt the "Best Practices" as defined by the TPCA (attachment one) for use by all municipal jails and as an element of the above registration, require certification that the municipal jails, holdovers, etc. are in compliance and if not, what actions are being implemented to obtain compliance. Those municipal jails not in compliance should be required, at the time of submission of the information called for in recommendation 1 (above), to submit their progress toward compliance, their reasons for lack of attainment and obstacles to achievement, the steps that will be taken to achieve compliance, and the date of their projected compliance.
3. All reports from municipal jails to TCJS should be freely available to the public on their website.

Recommendations charge five

Review the detention of juvenile offenders in local jails, state jails, and Texas Department of Criminal Justice prison units by examining conditions of confinement, including quality of education, mental health treatment and medical services, rehabilitative treatment, and equality of access to services for young female inmates. Review access to administrative and inspector general grievances in TDCJ facilities. Make recommendations for improving the system and reduce recidivism of juvenile offenders.

Juvenile offenders have specialized needs. Research also shows that juveniles are more receptive to programs to help prevent recidivism. It is important to keep incarcerated juveniles safe while also providing them opportunities to learn. The systems that have the highest number of juvenile offenders have all worked to develop programs to better assist them, especially the female offenders. It is the recommendation of this committee to:

1. Continue monitoring the wellbeing and recidivism of juvenile offenders.
2. Monitor the specialized programs for females.

3. Maintain better records on juveniles in local jails to ensure they are not being housed too long or with adult offenders.
4. Develop some form of educational programming for juvenile offenders in state jail.
5. Review the housing of juveniles in state jail facilities to monitor whether or not the policy of housing them with general population should be modified.

Recommendations charge six

Study and make recommendations to ensure the accuracy and timeliness of testing done in Texas forensic laboratories, including DNA and blood/alcohol testing. Assess and make recommendations for improving the capacity of Texas criminal laboratories to process evidence, identify ways to reduce the backlog of DNA evidence processing, identify ways to encourage qualified applicants for crime lab jobs, ensure adequate training for new crime lab technicians, ensure the availability of efficient crime lab processing to all regions of the state, and determine the impact of additional collection requirements on the capacity of Texas crime labs to process evidence. Consider the costs and benefits of creating a statewide crime lab.

On September 28, 2010 the Houston Chronicle reported that "HPD crime lab backlog delays trials, with understaffed crime lab getting 75 new cases a month, fear also is that criminals are still walking the streets." This committee finds that it is simply amazing that a problem, which surfaced in Houston in 2002, is yet to be resolved. During the public hearing it has become very clear that legislative action is required to address the continuing problems associated with Crime labs within Texas. The committee recommends the following actions:

1. All crime labs should be independent of law enforcement, investigators and prosecutors. DPS should ensure that state crime labs are free from influence from other divisions of DPS.
2. A Centralized Training Center for forensic scientist should be pursued under the crime lab division. Such a model would accommodate the accreditation and certification of personnel through standardized procedures.
3. The Legislative Budget Board should be instructed to conduct a study to evaluate the cost benefit ratios of public versus private crime laboratories. It should also review if competitive bidding between them would have a positive influence on testing cost.
4. Inequities exist with state crime labs services being provided free to only half of the citizens and no consideration given to the citizens who support these programs

with local funds. State crime lab services should be on a fee recovery basis and legislature mandating such is supported.

Recommendations charge seven

Assess how the Commission on Jail standards, the Department of Public Safety, the Department of Criminal Justice, and Department of State Health Services are working together to identify defendants with mental health issues, notify magistrates when defendants have been identified and, where appropriate, provide crisis stabilization services to defendants. Monitor legislation passed by the 81st Legislature for mental illness and make recommendations for any needed improvements to improve mental health services and reduce recidivisms.

The Committee's review of this interim charge identified both strengths and limitations on the states response to improving the early identification of defendants with mental illnesses in local jails and the timely notification of magistrates of the defendant's mental health status. The states continued leadership role in enacting comprehensive and one of a kind policy measures continues to be its strength. The failure or delays in implementing the policy initiatives represents a significant limitation that has negatively impacted both local and state criminal justice entities. In order to ensure compliance to the laws enacted by the Texas Legislature, the Committee submits the following recommendations:

1. Require the Texas Commission on Jail Standards to submit an annual report to the Legislature on SB 839 and SB 1557 implementation activities. Due to the limited authority the state has over local jails, the only possible enforcement and monitoring tool is through the TCJS standards. Requiring TCJS to incorporate compliance standards in their routine inspection practices will partially address this situation.
2. Convene a meeting of key local and state criminal justice, mental health, regulatory and law enforcement agencies to address implementation issues. This would provide stakeholders the opportunity to discuss implementation barriers, and make recommendations towards resolving the problem areas.
3. Monitor the implementation of the magistrate notification process by adding a reporting requirement to the Office of Court Administrations (OCA) responsibilities. OCA is an excellent resource to collect and analyze information from the courts on the status of the notification requirements.
4. Legislation that authorizes transportation of mentally ill individuals to State Hospitals by means other than law enforcement resources should be considered

Recommendation for charge eight

Study and evaluate the success of juvenile probation pilot programs aimed at community-based diversion of youth from Texas Youth Commission facilities. Make recommendations for needed legislative action and additional programs to increase the number of delinquent youth successfully rehabilitated in their home communities.

Extensive documentation and testimony was presented that revealed the effectiveness and efficiency derived from moving juvenile services away from state run juvenile prisons to community programs. Keeping a child in the community not only cost less but the creation of innovative programs provides improved services without a negative impact on public safety. On October 11, 2010 a New York editorial titled "Two Words: Wasteful and Ineffective" concerning the New York Juvenile Justice System. It recommends a process that Texas has already developed with the juvenile probation pilot programs aimed at community-based diversion of youth from Texas Youth Commission facilities.

California has already embraced this direction and is in its second year of shuttering their juvenile prisons and moving funding and authority to county juvenile probation programs. Texas needs only to continue to move resources to the front end of the juvenile justice system while providing secure setting for only the worst of the worst. This committee recommends that:

1. Continue the momentum by enhancing the juvenile probation pilot programs aimed at community-based diversion of youth from TYC, expanding these programs to all JPD in Texas.
2. Continue to downsize TYC and its central office to the appropriate level required for their reduced population.
3. Revisit the last session's sunset recommendation to consolidate all Juvenile Justice Agencies into a new Department of Juvenile Justice and reduce the apparent redundancies in the current organization structure. Emphasize the use of community programs to provide treatment and rehabilitation of youth in their communities.

Recommendation for charge nine

Consider the impact that secondary education school disciplinary laws and policies have on the juvenile justice system and the adult prison system. Recommend changes, if needed, to current law.

Revisit the last session's sunset recommendation to consolidate all Juvenile Justice Agencies into a new Department of Juvenile Justice and reduce the apparent redundancies in the current organization structure. Emphasize the use of community programs to provide treatment and rehabilitation of youth in their communities.

Simply stating that disciplinary action in schools leads to juveniles in the justice system is inaccurate, the phenomena has many more parts that have not been explored in this report. Texas has taken steps to increase the safety and productivity in schools; while attempting to preserve some local control. Chapter 37 of the Education Code has been amended in the past to compensate for needless criminalization of our youth. Improvements to the current system are still needed to ensure that schools remain safe and productive, while ensuring youth are not needlessly being exposed to the justice system, especially when other alternatives would be more appropriate and achieve a better outcome. The following are the recommendations of this committee:

1. Amend Chapter 37 of the Education code by narrowing the definition for "Disruptive Activities", "Disruption of Classes", "Serious and Persistent Misbehavior" to eliminate non-criminal acts.
2. Amend Chapter 37 of the Education Code by changing the dangerous or disruptive violation to dangerous and disruptive, In order to insure students are not being removed for simple disruptions to class.
3. Require TEA to evaluate and modify education standards at DAEPs and JJAEPs.
4. Require TEA to notify school districts of disproportionate referrals.
5. Require TEA to develop a tracking system for the funds generated by citations.
6. Require an evaluation of district with continued disproportionate referrals.
7. Require school district to implement some form of evidence based programs that are proven to reduce truancy, crime, and drug offenses.
8. Require more training for teachers and administrators in discipline in a educational setting, and early intervention options.
9. Exempt 18-21 year olds from the truancy laws.
10. Require the state auditor to evaluate the use of dropout funds by TEA.

Ensure that all cases with the exception of the cases for certified juveniles are referred to juvenile courts, being that they have set standards for dealing with juveniles and consistency is important.

Recommendation for charge ten

Evaluate the usage of current Texas practices for facilitating the fair and accurate courtroom testimony of children and reducing the trauma associated with testifying, particularly for children who are victims of sexual abuse. Specifically consider recent efforts and trends across the nation to develop best practices, including "court

orientation" programs, and ensure that courtrooms are more child friendly and accommodating for young victims to reduce the trauma associated with testifying in court while ensuring that fair and accurate information is solicited from the child as a witness.

It can be stressful for anyone who has been victimized to testify in court. This is true for adults and especially true for children who are victims of abuse. Recent trends across the nation have shown that court orientation programs specially designed for children can have extremely beneficial effects in reducing the stress of testifying while also promoting honest testimony. Upon reviewing the matter, this committee recommends the following:

1. Require all jurisdictions to make good faith efforts to adopt "Best Practices" regarding testimony of children in court.

Recommendation for charge eleven - the Control of Contraband

Monitor the implementation of legislation addressed by the Senate Committee on Criminal Justice, 81st Legislature, Regular and Called Sessions, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Study the impact of certain provisions in the 2009 DPS Sunset bill on the timely processing of concealed handgun license applications and the issuance of licenses. Monitor and make recommendations, if needed, on actions by TDCJ to improve security and reduce contraband.

1. The agency should continue to review and adjust policies and procedures related to unit security and contraband detection and stay abreast of technology advancements such as the potential cell phone jamming technology which, if made legal could greatly enhance the agency's ability to address cell phone issues.

Interim Charge One

Study the efficiency and fairness of the current sexual offender registry system and make recommendations to improve the system, if necessary. Study the issue of compliance with the Adam Walsh Act, focusing on the associated costs to the state and the punishment of juveniles. Examine the risk assessment tools used to measure the likelihood of recidivism among sexual predators.

Introduction

Over the past decade several federal and state laws have been enacted modifying how communities deal with sex offenders. As a result sex offenders have been required to register with their local law enforcement agencies. They provide information such as their home address, their place of employment, a picture, and their offense. This information is then added to a public database and available to be searched at anytime by any person. In addition to the registry there are public notifications sent out to communities to inform them that a registered sex offender lives nearby. This is all done in order to increase public safety. However there have been several consequences as a result of the enacted laws. One such consequence is the effect registering has on sex offender's families. Often the children of sex offender's are tormented by their peers for the crimes of their parent. One of the very issues the Texas Legislature will have to deliberate about this session is whether or not to comply with a federal law that will change the way the state handles its registry.

The theory behind the sex offender laws is to monitor known offenders in order to keep them from reoffending. State and federal laws have been passed as a result of several child abductions and murders by already convicted sex offenders. Public safety and especially protection of our children is the main objective. The issue is whether or not the measures the state and the federal government have taken have done that, or if they have actually decreased public safety.

The past decade has brought about various sanctions for sex offenders. The Jacob Wetterling Crimes against Children and the Sexually Violent Offender Registration Act (JWA) of 1994 created the statewide registries. It is also the act that states Texas will comply with the minimum standards required by the federal government in order to receive funding. Under this act offenders who had committed a sex crime were required to report their current name and address to local law enforcement. At the time of enactment the registries were not public information. However, in 1996 Megan's Law was passed and the registries were made public usually via the internet but also through public notifications. Photographs of the sex offenders were also now available to the public.

In addition to the federal legislation, Texas passed many of its own statutes regarding sex offenders. In 2003 legislation was passed adding guidelines to how community supervision for sex offenders would be run, and implementation of child safety zones of 1000 ft. There was also a bill that added employer of and school attended by a sex

offender to the registry. This same bill mandated assessments for sex offenders rather than determination when considering civil commitments.

Civil commitment is continued monitoring by the state for sexually violent predators that also have a behavioral abnormality. These particular sex offenders are subjected to civil commitment because the state has determined they are a high risk to the public. Civil commitment begins after the offender has completed the terms of their sentence. The civilly committed are also required to participate in outpatient treatment. In addition individuals who are civilly committed remain under commitment until the State determines their behavior abnormalities have changed enough to stop any predatory behavior. Civil commitment and the other mentioned sanctions are practiced by Texas.

In 2005 the Texas Legislature enacted a bill that created a mechanism for deregistration, which is a process to be removed from the sex offender registry, for certain sex offenders. The process has still not been utilized because of the link to the federal law through JWA. In 2007 the same year Adam Walsh Protection Act (AWA) was enacted at the federal level, Texas enacted Jessica's Law. Jessica's Law ended the statute of limitations for certain sex offenses and, added continued sexual abuse of a child to statute, and mandated sex offender treatment for inmates. It also made the death penalty an option for individuals convicted of a second sex crime in certain situations. There was also legislation to increase the amount of information provided to law enforcement agencies that pertained to sex crimes.

The purpose of the AWA is to provide consistency to registries across the country and allow for a national database. It is intended that states comply with this act by 2009; however, today only three states have complied. Texas has not complied and is currently debating compliance with the act. Those states that do not comply risk the loss of federal dollars. The penalty is ten percent of the Byrne grant funds, which is money allocated to law enforcement agencies for crime prevention. Retaining the ten percent of federal funding is not adequate incentive because the cost to implement the changes to registries would cost much more than states would lose. In Texas the loss would be \$1,404,571, where as the cost is assessed at \$38,771,924

The major cost of the AWA is the result of modifying registration requirements. The most significant change to Texas would be the required registration of offenders with offenses that are not currently included in the list of offenses requiring register. An example of this is kidnapping of a child. Currently an individual only has to register if there is an element of sexual intent or if an assessment is done that indicates the individual is a risk for sexual misconduct. AWA does not call for the utilization of risk assessments and relies solely on offense. This would cause the number of people on the registry to increase greatly. The AWA also increases the number of times an offender has to verify their information with law enforcement. The number of times is determined by the tier they are in. There are three tiers; three is the most severe. Another major change is that sex offenders not only have to submit fingerprints and information but also DNA to law enforcement. The length of required registration is also modified by AWA. Tier

one person would have to register for fifteen years; tier two for twenty five years; tier three for life.

There are recent stories out of Dallas illustrating how the current system is already backed up. Staff shortages in law enforcement agencies have led to sex offenders being turned away when they go to update their registry information which they are required by law to do. The increase in required information reporting mandated by AWA will only add to the strain on law enforcement agencies and they, as illustrated by the situation in Dallas are already struggling.

Currently the state of Texas allows for a judge to decide whether a juvenile has to register. It is done on an individual basis, which many would argue is the proper way to do it. AWA mandated that all juveniles would have to register for sex offenses. There was major concern with this change because of how it affects the privacy of juvenile records. Research has shown that juvenile sex offenders recidivism rate is much lower than adults. They are often young enough to learn new behaviors and not reoffend. Allowing for registration exceptions allows for them to have a new start once they have served their time. Complying with the AWA removes the discretion of a judge and places juveniles on the registry based on conviction and not assessment or rehabilitation, which has always been the goal with juveniles.

Discussion and Testimony

The Senate Criminal Justice Committee conducted a public hearing on this charge on June 10, 2010.

Invited testimony

Allison Taylor, executive director, Council on Sex Offender Treatment (CSOT), began the testimony with discussion about the CSOT and the treatment program for sexually violent predators. She stated that there are currently 166 offenders in the program, 93 of which are in the community. These are the individuals that have been civilly committed. Thus far no individuals participating in the outpatient treatment have reoffended. It is providing public safety as well as being cost efficient. The cost of inpatient treatment ranges from approximately \$70,000 to \$125,000 a year, versus \$24,000 a year for outpatient.

Next Taylor commented on the assessment tools utilized to assess risk of sex offenders. For the past five years CSOT has used a dynamic risk assessment process. Prior to 2005 only the Static 99 was used. The Static 99 is an actuarial risk scale which estimates the probability of sexual and violent recidivism. This method resulted in many juvenile offenders being classified as high risk. The process utilized today has multiple parts. The risk assessment done affects community notification, but does not affect the length an individual is required to register. Current federal law does not allow for the use of risk assessments under the AWA. Taylor stated that the majority of states in the country are

waiting to comply with AWA in hopes that the federal government will amend the act to allow for risk-based assessment to determine registration length.

According to Taylor, Texas has been working to narrow the sex offender registry to dangerous sexual offenders. Compliance with AWA would undo this work and place or keep many low risk offenders on the registry. The registry has already grown substantially over the years making it hard and costly to maintain for law enforcement. The sheer numbers on the registry increase the difficulty of monitoring the dangerous offenders. Under AWA registration would be determined by the category of one's offense, not the nature and risk factors.

Liles Arnold, chairman, CSOT, also testified regarding AWA and the Sex Offender Registration Act. He stated that one concern the council has with AWA is its emphasis with establishing a nationwide sex offender registry. This is a concern because recent research shows that registration is not protecting the public and reducing recidivism rates. He stated that there are currently 57,000 sex offenders currently registered in Texas. The current registry consists of unequally dangerous sex offenders; the concern is the large numbers affect how successful law enforcement is at monitoring the dangerous offenders.

Arnold stated that registration for sex offenders has many negative side effects for individuals and their families. It leads to difficulty finding employment and housing both of which are crucial for rehabilitation. He discussed a study done in Michigan which demonstrated that citizens were not even utilizing the registry that was cause so many negative consequences.

Arnold's recommendation to the committee was that Texas should not comply with AWA. The result of noncompliance would be a loss of federal funding. Arnold stated that the National Conference of State Legislators estimated the amount of lost funds at approximately \$2,192,600 for 2011. However any loss would have to be balanced with the cost of compliance. He stated that CSOT had not completed a cost analysis, but that California estimated their cost at approximately \$38 million.

Arnold closed by emphasizing that AWA would categorize sex offenders by offence and not by scientific risk assessment. He reminded the committee this could lead to low-risk offenders being miscategorized as high-risk, and high risk offenders being miscategorized as low risk. He stated that narrowing the registry would allow for the maximum utilization of public resources. He also supported better communication between states and continued development of research-based measures to identify and monitor high risk sex offenders.

Mathew Ferrara, treatment provider for COST, testified that if the sex offender registry was affective than recidivism among sex offenders would decrease. Multiple studies have been done comparing the recidivism of sex offenders on the registry to the recidivism to those not on the registry. The recidivism rate of those on the registry is not lower than that of the individuals not on the registry. Ferrara further stated that lack of reduction does not mean individuals in the community do not utilize the registry. However, if this is

to be the main function of the registry it is important to limit it to the truly dangerous sex offenders so the public is aware of the individuals that pose a true threat. He also emphasized the importance of a deregistration process to maintain manageable numbers and allow for the hardship of sex offender's families to be reduced.

Steve McCraw, director, Texas Department of Public Safety (DPS), testified regarding the duty of DPS to maintain the registry. McCraw testified that the registry is in place to assist law enforcement and protect the public. According to McCraw in 2009 there were 5.9 million hits on the sex offender registry. He also testified there was no way to indicate if the viewings were by citizens for personal use, employers, or by agencies or groups for statistical and research purposes. McCraw also testified that there are currently 61,192 sex offenders registered in the state of Texas. Currently 4.4 percent of sex offenders are noncompliant.

An update of information provided by DPS shows that as of October 26, 2010 there were 63,694 active registrants in the state of Texas. 19,023 of the registrants do not have a risk assessment, 7,507 are high risk, 23,065 are moderate risk, 13,225 are low risk, 157 are civil commitments, and 717 are unspecified. Unspecified describes those cases where all the information has not been received, but the offenders have been identified as sex offenders. As of this date 2012, 3.16 percent, are reported as absconded. 256 were high risk, 701 were moderate risk, 322 were low risk, 726 were not required, 4 unspecified, and 3 civil commitments.

McCraw expressed a concern with Texas becoming a haven for other states sex offenders. This is a concern because if another state has a law that does not exist in Texas and there is no similar law they are not required to register. He cites California's annoy and molest offense as an example. Currently other states notify Texas if a registered sex offender is moving to Texas; however, this does not happen if an offender absconds. McCraw also informed the committee that DPS wants to creating a top 10 sex offender fugitive program. Included with the updated information was a statement that the top ten sex offender fugitive program had started. One benefit of the program is that compliance with registration requirements has increased, which is one of the reasons for the decrease in noncompliance from the April hearing report and the October update.

Gregory Moss, lieutenant, Austin Police Department (APD), testified regarding the cost to comply with AWA for local law enforcement agencies. He also explained that AWA would provide national standards removing the responsibility of converting offenses from other states from local law enforcement. He stated that while APD attempts to focus on those that are in noncompliance or will reoffend, the public assumes all registered sex offenders are predators. AWA would only increase the number of people on the registry whether they were predators or not. Moss testified in support of risk assessments and a deregistration process. He states that if low-risk offenders were able to deregister that approximately 10 percent of the Austin registry could be removed. This would increase their ability to monitor the predators.

Public testimony

Allison Taylor returned to add to her testimony. She testified that Article 62.402 (A) and (B) of the Code of Criminal Procedure binds Texas to federal law; and thus requires Texas to comply with AWA. If this statute is not repealed then Texas cannot progress in its efforts to implement legislation passed in previous sessions to allow for a deregistration process. Instead Texas may have to add offenses in order to be in compliance.

Philip D. Taylor, a sex offender treatment provider, stated that not only do sex offender registries not protect the public, but according to research they are not cost effective. He also stated that barring sex offenders from certain areas does not protect the public; it only makes it difficult for sex offenders to find homes and creates sex offender ghettos. In addition he stated that reviewing recidivism rates indicates that 75 to 80 percent of sex offenders are low risk. Taylor's recommendation was to bar local governments from creating sex offender exclusion zones.

At this point many members of the public testified to express their concerns and views regarding AWA and the direction Texas should move. Testimony was provided by people affected by being on the registry, or having a family member on the registry. Some of the main concerns of the individuals testifying were the hardship of finding a place to live and employment. The next most conveyed hardship was the harassment not of the registrant, but of their families. There were stories about children being teased and ostracized because they had a parent on the registry. Another situation described how a father lost his family, not because of a new offense or a violation, but because he could not work and support them or provide a home. Many of the witnesses expressed that circumstances under which the offense was committed and notes that no other offense had been committed since. Other concerns expressed by this group were the lack of differentiation between dangerous predators and other sex offenders, a lack of differentiation in the treatment for different risk levels, which has been shown in research to make a difference. The high cost of treatment was also mentioned. The group's recommendations were not to comply with AWA, start utilizing the deregistration process, to review the process for registration of those who receive deferred adjudication, and to adjust current statute to shift more focus to dangerous sexual predators. Another recommendation was to repeal the retroactive application of registration and provide due process regarding placement on the registry.

Beverly Elam, representing Texas Voices, testified against compliance with AWA. She stated that Congress decided on AWA without all the data being present. She cited the Justice Policy Institute as stating that in the first year of implementation of AWA it would cost Texas \$38,771,924; while the penalty for noncompliance would only be \$1,404,571, plus an additional \$400,000. Elam also stated that implementation of AWA may result in legal issues. She cited Ohio as an example. The Ohio Supreme Court ruled against implementations of AWA. Elam expressed that there should be a differentiation between offenders convicted of consensual acts and other sex offenders.

Recommendations

Sex offenses are very serious crimes. There is no debate over whether violent and dangerous people should be punished monitored extensively. However like with most issues there are levels and gray areas. In addition there are limited resources to address all of the issues facing the state today. However, it is important to emphasis the fact that high cost does not negate public safety measures. Extensive research has been done on sex offenders and the affects of registration and other sanctions. Based on the research, the testimony provided during the hearing, it is clear registries do not provide the public safety, definitely not the way it is now. Add this to the recent stories in the media highlighting some of the issues and concerns it is the recommendation of this committee to:

Repeal Article 62.402 (A) and (B) of the Code of Criminal Procedure to enable Texas not to be bound to the federal minimum for registration requirements.

1. Establish a minimum standard for registration requirements, which include the current process for deregistration for those approved by the CSOT.
2. Not to implement AWA.
3. Require that all registered sex offenders have risk assessments done.
4. Continue working to improve communication between states regarding registered sex offenders who present a significant risk to community safety.

Interim Charge Two

Review statistics regarding the crime of driving while intoxicated, including accident statistics, alcohol-related deaths and injury, and other impacts on the community. Examine enforcement options used nationwide to deter driving under the influence and make recommendations to reduce the number of alcohol-related traffic fatalities and accidents in Texas.

Introduction

The offense of driving while intoxicated (DWI) was the subject of a review conducted by the Senate Criminal Justice Committee in its Interim Report submitted in September 1996. At that time Texas led the nation in DWI fatalities with 1,782, representing 56% of all highway fatalities within the state. No major amendments to Texas law occurred during that following session. However in 1999 under threats of the loss of significant federal funds, the legislature lowered the illegal intoxication level from 0.10 to 0.08 Blood Alcohol Concentration (BAC). Also open containers of alcohol were banned in motor vehicles and a criminal penalty applied during the 2001 session, again to avoid sanctions against the state and the loss of federal highway funds.

Starting with the 1993 (73rd legislative session) rewrite of the Texas Penal code, major enhancements to Texas DWI statutes have been passed and implemented. These include the restriction on using deferred adjudication in DWI cases, mandatory jail time when probation granted, mandated special conditions of probation in DWI cases, new state jail felony offense of DWI with a child in the vehicle, DWI while boating, DWI while flying, assembling and operating amusement rides, automatic suspensions of driver license for declining breath or blood alcohol test, intoxicated assault, intoxicated manslaughter, mandatory use of interlock device for repeat offenders, and the expansion of mandatory breath or blood testing for alcohol levels under specific offense elements. Other legislative changes have also added civil penalties, with the most significant being the Drivers Responsibility Program which contains surcharges for DWI offenders to renew their drivers license. For a first offense an individual is charged \$1000.00 per year for three years. For a repeat offender, the penalty increases to \$1,500.00 per year for three years.

Today, Texas still leads the nation in DWI fatalities but has demonstrated a positive reduction in lowering the fatalities to 1,269, which is 38% of all traffic fatalities on Texas roads. These improvements are observed during a time when Texas has had a significant gain in population, miles driven and roads constructed. However, even with all the criminal enhancements, civil surcharges, driver license restrictions, Texas still leads California in impaired driving deaths, a state that has more population, miles driven and roads.

According the National Transportation Safety Board (NTSB) the major cause of impaired traffic death is the result of "Hard Core Drinking Drivers". The NTSB includes within this designation those offenders with a high blood alcohol concentration of 0.15% or

greater or who are repeat offenders with a drunk driving arrest or conviction in the past 10 years. The NTSB provides that these offenders:

- Were involved in more than 71% of the alcohol impaired driving fatalities and more than 22% of all highway deaths.
- Between 1983 and 2008, more than 228,000 people died in crashes involving hard core drinking drivers.
- That in 2008 there were 11,773 deaths in the United States from alcohol impaired driving crashes and 8,374 involved hard core drinking drivers.

DWI Discussion and Testimony

The public hearing on interim charge six was conducted on Thursday July 8, 2010. Chairman Whitmire opened the meeting with remarks that Texas has some of the toughest DWI laws and sanctions in this nation. Pointing out that in 13 other states, DWI cases are sanctioned only at the county jail level and a repeat offender will never reach the state prison level. In Texas a 3rd offense of DWI is a third degree felony punished by two to ten years in prison and a fine not to exceed \$10,000.00. Current prison population numbers show that approximately 5,500 individuals are in the Texas Department of Corrections (TDCJ) for their 3rd DWI, a number that has remained consistent for the last several years. It was not until 2007 that legislation created a specialized 500 bed treatment program within TDCJ to provide treatment to this population. The Board of Pardons and Parole (BPP) is reviewing inmate graduates of this program for parole consideration and currently approximately 95% of these graduates are being paroled under special conditions, which include continued treatment and driving restrictions.

Invited Testimony

Steven McCraw, Director, Texas Department of Public Safety (DPS) provided that 34.8% of statewide DWI arrests over the last five years have been made by DPS. He added that currently their efforts are hampered by the shortage of 260 troopers, and that they work closely with local law enforcement agencies regarding DWI offenses.

Art Acevedo, Austin Police Chief, testifying on behalf of the Austin Police Department (APD) and the Texas Police Chiefs' Association provided that over the last three years his department has taken a tough stance on DWI cases. In 2007 nearly 50 % of traffic fatalities in Austin were DWI related. During 2008 APD implemented "no refusal" weekends, requiring a breath or blood test for DWI suspects through a search warrant if the driver refused to voluntarily submit to these test. APD is conducting approximately 12 "no refusal" weekends a year around major holidays. The results to date demonstrated how effective this activity can be, that 92% of the suspected DWI drivers have tested a BAC of 0.08 or higher and that 74% of these had a BAC of 0.16 (two times the illegal level) or higher. With increased enforcement and education the DWI related fatalities have been reduced to 33% of local traffic deaths. Chief Acevedo also added additional details of APD efforts:

- APD focuses their enforcement actions in areas where data reveals problems.
- That the enhanced seat belt laws are having a positive impact on preventing fatalities during accidents.
- In DWI accidents APD will contact the business that served the person alcohol and the Texas Alcohol Beverage Commission (TABC).
- That the city of Austin and Travis County fund staff phlebotomist for mandatory blood draws, either at the central intake jail or on "no refusal" weekends the phlebotomist is available on site, traveling in a vehicle.
- The presence of breath or blood alcohol level increases conviction rates and prevents unnecessary trials, drivers who refuse these test should face jail time or community service (current law provides mandatory suspension of driver license).
- That driving under the influence of illegal and prescription drugs is also an issue and these cases are also charged under state laws that regulate DWI offense.

Chief Acevedo stressed that early intervention in both public intoxication cases and DWI cases is needed; assessments could lead to rehabilitative programs which should be balanced with the punishment asserted. In conclusion, he recommended the following:

- Expand mandatory breath and blood alcohol test; make refusal a criminal offense punishable by jail time.
- Allow sobriety checkpoints.
- Add new offenses to the Penal Code of Aggravated DWI for a driver who's BAC is 0.18 or higher and enhance punishment. Also add Driving While Ability Impaired (DWAI) for those who test 0.05 to 0.07 BAC, to replace charging with Reckless Driving or Obstruction the Roadway offenses.

Kenneth Mayfield, Dallas County Commissioner for District 4, on behalf of the Dallas County DWI Task Force (DWITF) provided that during the next session the passage of a law authorizing sobriety checkpoints would be their main and only focus. He stated that this is just another tool for law enforcement to use along with their other efforts, such as rolling saturation patrols. He added that well publicized sobriety check points are more effective than the rolling saturation patrols which require probable cause to stop a vehicle.

Judge David Hodges, Judicial Liaison, Texas Center for the Judiciary, provided that the most pressing legislative issue with DWI cases is to eliminate or substantially reduce the license renewal surcharges that is imposed on DWI convictions by the Driver's Responsibility law. Since imposing these surcharges:

- Conviction rates have decreased every year; in 2005, 99,501 DWI arrest resulted in 63,132 convictions. In 2009, 102,309 DWI arrest resulted in 44,777 convictions.
- Dismissal rates have increased every year; DWI cases are prosecuted as reckless driving, obstruction of highway, and public intoxication, in order to avoid the civil penalty.

- Court's pending caseload has gone up significantly- an increase of approximately 25,000 cases. At the current statewide trial capacity, it would take 16 years to dispose of these cases, if they all demand a trial.
- These surcharges are not changing behavior, not being collected, and are creating a new class of criminals each day by adding to the 1.2 million unlicensed and uninsured drivers in the state.

Judge Hodges proceeded to address the significant decline in the number of DWI defendants being placed on probation. The decline being a result of all incentives to accept probation having been removed from the DWI statutes. It has become a much more viable option for defendants to simply accept a jail term, which can then be discharged through three for one credit in overcrowded county jails. Lost in this process is the opportunity to change the future behavior of those DWI defendants who are likely to re-offend. Statistically, at least one third of first offenders will re-offend, and a much higher percentage of second offenders will commit a third and subsequent offenses. The ability of trial judges to grant deferred adjudication and early release for completion of all terms of probation as well as when a defendant is no longer a concern to the public safety, as in all other criminal cases, should be restored.

Judge Hodges also called for their elimination of the current system of driver's license suspensions (ALR) and special need licenses. Only those currently required by federal law should be retained, with those being placed in one statute.

Concerning the mandated DWI education course, and the repeat offenders DWI education course (both required for receiving certain federal funds), Judge Hodges stated they are not effective and suggested that the curriculum be reviewed and rewritten to incorporate adult learning and cognitive education principles.

Jean Spradling Hughes, Presiding Judge, Harris County Criminal Courts at Law, provided specific DWI statistical reports produced by their Office of Court Management. In 2000 the conviction rate (those with jail and or fine) was 48% versus the probation rate of 45%; by 2008 the conviction rate rose to 65% while the probation rate fell to 23%. These reports also provide that in a three year study (2005-08) of all 2005 first time DWI cases in Harris County, those who were on probation had a rearrest rate of 12% versus 19% of those with straight convictions. Judge Hughes presented that rapid intervention and treatment are key to preventing future DWI offenses. Screening and effective assessments should guide the judge to tailor a supervision program that meets the identified needs and risk.

To counter the trends in Harris County (which mirror those statewide trends described by Judge Hodges), a collaborative program with Harris County District Attorney Pat Lykos, was created. The Direct Intervention using Voluntary Education Restitution and Treatment (DIVERT) is a one to two year pretrial intervention program for first offenders. DIVERT includes a complete assessment, an individually tailored program which may include treatment, mandatory drug testing, and electronic monitoring of alcohol use of person and or vehicle. An individual is required to enter a plea of guilty

and to sign a written contract that specifies the conditions of supervision. If expelled from the program, they will serve a thirty day jail sentence. However, successful completion leads to a dismissal of the case and the arrest expunged after one year. Only the driving record will indicate the DWI event and it will be used to enhance the offense in a future arrest. With one year of operations, the DIVERT program has had approximately 2,700 participants and has demonstrated a 2% failure rate.

Judge Hughes also addressed the inconsistency within the law that requires an interlock device if an offender takes a breathalyzer test, fails and is charged, but not if the person refuses the test. She recommended that the use of these devices, as well as oversight of occupational licenses should be at the discretion of the court. She agreed with the discussion that high surcharges and license suspension interfere with an offenders' ability to rehabilitate and that current law impedes the courts discretion, leading to innovative programs such as the DIVERT program.

Dibrell "Dib" Waldrip, Judge of the 433rd District Court of Comal County, provided information on drug court programs including the Challenge Court program which he presides over. Judge Waldrip asserted that working with individual DWI offenders on a one on one basis and providing mental health and substance abuse treatment at the earliest possible stage greatly reduces recidivism. Additional judicial and treatment resources, along with incentives are needed from the state to standardize drug court programs. The Challenge Court is a post conviction program aimed at repeat offenders. A successful completion results in a misdemeanor conviction rather than a felony conviction.

Joining Judge Waldrip was Glenn Leineweber a participant in the Challenge court program. Mr. Leineweber spoke of his personal experience and how he was provided access to recovery.

Public Testimony

Lauretta Hill, Deputy Chief, Arlington Police Department (APD), representing the City of Arlington provided that approximately 50% of traffic fatalities in Arlington are DWI related. She added that APD uses rolling saturation patrols, "no refusal" blood draw weekends, bar checks, and targets specific problem areas supported by intoxication statistics. She also spoke in favor of sobriety checkpoints and compared them to the already legal driver's license and insurance check points.

Scott Bratcher, Lieutenant, Dallas Police Department (DPD), representing his department provided that 54% of the traffic fatalities in Dallas over the last two years were alcohol related. DPD also conducts "no refusal" weekends, has a full time DWI squad and makes about 3,500 DWI arrest each year. He also supported enhanced penalties for refusing testing and for high BAC cases, and endorsed the use of sobriety checkpoints as a useful tool for law enforcement.

Paul Lassalle, Senior Police Officer, Houston Police Department (HPD), representing his department provided that during their "no refusal" weekend over Memorial Day in 2007, 60% of the persons who initially refused testing, when tested, were positive for drugs other than alcohol. He also supported the expansion of mandatory blood testing for suspected DWI cases, the use of sobriety checkpoints and reforming the automatic license suspension (ALR) laws as they are ineffective.

Leah Pinney, Fair Defense Director, Texas Criminal Justice Coalition, representing her organization stated that the focus should be on treatment to address the underlying addiction. She stated that enough strong law enforcement tools are already provided.

Bill Lewis, Public Policy Liaison, Mothers Against Drunk Driving (MADD), representing his organization provided support for sobriety checkpoints and mandatory interlock devices on all DWI convictions, including first time offenders and non probationers. He also stated that he is in favor of treatment and that MADD is just as concerned with person driving under the influence of drugs as those impaired by alcohol.

Brittany Hibbs, Public Policy Liaison, Texans Standing Tall (TST), representing her organization provided that the Uniform Accident and Sickness Policy Provision Law (UPPL) should be repealed as it allows insurers to deny claims for injuries sustained while under the influence of alcohol. Also, that the ALR laws should be reviewed and to allow for the expansion of mandatory blood draws on suspected DWI offenders.

Kristi Allen, Director of Coalitions, Community Coalitions of Greater Houston (CCGH) supported the repeal of the UPPL expanding treatment options, expanding drug courts and innovative first offender programs, expanding blood draws for DWI suspects and reviewing ALR and surcharges.

Shannon Edmonds, Director of Governmental Relations, Texas District and County Attorneys Association (TDCAA), representing his organization provided information concerning the ALR process cost and how it increases the cost to local law enforcement. He suggested that the ALR process could be deleted without negatively impacting the criminal justice system. Returning deferred adjudication in DWI cases is supported by prosecutors and DWI is the only misdemeanor offense where it is disallowed. He added that deferred adjudication can serve as an incentive for a defendant to change their behavior.

Edward Jimenez, representing himself, provided insight into his personal tragedy created by a drunk driver. He also spoke in favor of sobriety checkpoints being allowed.

Jamie McAfee, representing herself supported the need for more treatment and intervention into these cases and supported the use of electronic monitoring equipment that detects an individual's use of alcohol.

Donna Chatham, representing herself spoke to DWI prevention efforts, especially improved training for servers and establishments that serve alcohol.

Recommendations

Texas has "tough" laws governing DWI offenses and allows a great deal of flexibility for prosecutors to seek the appropriate level of sanctions and punishment. A current practice among prosecutors is to file intoxicated manslaughter cases as murder, thus raising the offense from a 2nd degree felony to a 1st degree felony, using the vehicle as a deadly weapon. However not all of the efforts in Texas have turned out to be "smart". Corrections to our current statutes and practices are demonstrated and the following are recommended by this committee:

1. Eliminate or greatly reduce the Driver Responsibility Program surcharges as they relate to DWI convictions. The increasing number of drivers who are unlicensed and uninsured is unacceptable.
2. Simplify and place into one statute the complicated and confusing automatic license suspension laws (ALR). Maintain in Texas law only those required by federal funding guidelines.
3. Remove from statutes barriers for Judges to utilize pre-trial intervention, deferred adjudication and probation sentences in DWI cases. Allow Judges to tailor the level of supervision and intervention required after professional assessment has been conducted. This would include treatment, supervision of occupational licenses and the use of available interlock and electronic monitoring devices.
4. Add to current statutes incentives for suspected DWI offenders for submitting to breath or blood test. At the time of a trial, if evidence is presented that a BAC of .15 or over is established, allow a 1st or 2nd DWI offense to be punishable at the next level.
5. Establish strict guidelines for the execution of search warrants for suspected DWI case blood draws. Place limitations on the level of force allowed to obtain samples and establish the professional certification level required for individuals who conduct these procedures.

Interim Charge Three

Review the performance of the *Fair Defense Act* and the Task Force on Indigent Defense. Study key outcomes of the law, including: appointment rates in felony and misdemeanor cases; state and county indigent defense expenditures; attorney caseloads; attorney compensation; access to investigators and experts; and overall quality of counsel for the indigent. Examine the Task Force on Indigent Defense's effectiveness in monitoring and enforcing standards and design strategies to improve the delivery of services for indigent defense, including timing of the appointment of counsel, the use of the appointment wheel and the monitoring of workloads and performance of attorneys.

Introduction

The Senate Criminal Justice Committee conducted a public hearing on this charge on May 13, 2010. Invited testimony was provided by Dr. Tony Fabelo, Director of Research, Council of State Governments Justice Center; Jim Bethke, Director, Task Force on Indigent Defense; Judge Sharon Keller, Presiding Judge, Texas Court of Criminal Appeals; Jim Allison, General Counsel, County Judges and Commissioners Association of Texas; Andrea Marsh, Executive Director, Texas Fair Defense Project; Ana Yanez-Correa, Executive Director, Texas Criminal Justice Coalition; Jeanette Kinard, Director, Travis County Mental Health Public Defender Office; Roger Jefferies, Executive Manager, Travis County Criminal Justice Planning; and Jeff Blackburn, State Bar of Texas & Texas Tech Innocence Project Clinic. Public testimony was provided by Patrick McCann, representing himself.

Prior to 2001, Texas had no coordinated system for providing public defense services to poor people accused of crimes. Widely varying local procedures governed the right to counsel for these defendants. To address the issue, the 77th Legislature passed the *Fair Defense Act* (FDA) - S.B. 7 - which required all criminal courts in Texas to adopt formal procedures for the appointment of counsel to indigent defendants. The FDA allowed flexibility to local jurisdictions in adopting these procedures, however, required that all jurisdictions meet minimum statewide standards. These standards include:

- Prompt appointment of defense counsel
- Methods for selecting defense lawyers eligible to receive court appointments, including qualification standards
- Methods for selecting defense lawyers for appointment in specific cases
- Methods for determining indigency
- Fee schedules for payment of appointed defense lawyers
- Compensation procedures for experts and investigators in cases involving indigent defendants

The FDA also created the Task Force on Indigent Defense. This new commission would provide oversight for the implementation of FDA and administer a new state program for awarding state grant funding to counties for the purpose of indigent defense.

Discussion and Testimony

Invited Testimony

Invited testimony began with Dr. Tony Fabelo, Director of Research, Justice Center, Council of State Governments, who provided a written report to the Committee entitled "Justice Denied," regarding the state of indigent defense nationwide. Dr. Fabelo made mention of the great strides the State of Texas has made in the area of indigent defense since the passage of the *Fair Defense Act* in 2001. Prior to the *Fair Defense Act*, Texas was considered the "laughing stock of the nation," according to Dr. Fabelo. Today, Texas has well defined minimum operating standards with oversight from the Task Force on Indigent Defense (TFID), established state funding through formula and discretionary grants, and created 16 public defender offices serving 91 counties.

Dr. Fabelo went on to describe the organizational structure and functions of TFID. Judge Sharon Keller, presiding judge on the Court of Criminal Appeals, also serves as Chairman to TFID. Jim Bethke, serves as Director of the TFID. The Task Force is governed by the Office of Court Administration (OCA), and is provided administrative support through OCA. TFID was created to implement the *Fair Defense Act* and is responsible for the creation of the administrative infrastructure and minimum operating standards for counties mentioned earlier by Dr. Fabelo. Those standards include prompt magistration, standards for determining when a defendant is indigent, a system for the fair and neutral appointment of counsel, and certain qualifications for participating attorneys.

Dr. Fabelo noted that despite the gains achieved since 2001, when an indigent defense system was virtually non-existent, the State continues to lag behind most states in total spending on indigent defense and recognizes the continued need for improvement. In 2009, Texas spent approximately \$28 million on indigent defense support for counties - bottom 10 nationwide. However, the total cost, most of which is carried by counties, was somewhere near \$186 million. Despite remaining below the national average on indigent defense spending, Texas continues to make significant progress. Dr. Fabelo testified that since 2002, indigent defense representation has increased by 45 percent. Going from roughly 324,000 appointments in 2002 to just over 470,000 in 2009. Texas has also seen improvement in the appointment of counsel from FY2002 through FY2009. Attorney appointment rates for misdemeanors increased from 26% to 35% and attorney appointment rates for felonies increased from 54% to 68% over the time period.

Fabelo then testified that evaluations have shown that regional and specialized public defender offices are a cost-effective and efficient way to provide indigent defense, particularly in rural areas and for those with mental health needs. He went on to list some of the advantages of public defender offices which include economies of scale, higher quality of representation and case management, more budget predictability for counties, and a reduction in the jail population because defendants are no longer being held in jail due to lack of representation. Dr. Fabelo also recognized the challenge presented by the appointment of counsel by the courts. In many cases, the court appoints counsel for

indigent defendants. It is not uncommon for a court to appoint the same attorney(s) for all indigent cases. This creates the perception that the defense attorney is not independent of the court, as well as the perception that these attorneys are favored over others by the court. This often leads to questions of credibility for the court and the quality of representation of indigent defendants. Fabelo later testified that independence of counsel is an important aspect of an effective indigent defense system. He suggested local entities be able to experiment with methods of appointment to see which one is most effective.

Dr. Fabelo then discussed a proposal, which is under review by TFID, for the creation of a public defender office in Harris County - the largest county in the United States without such an office.

Dr. Fabelo went on to present some challenges facing the State in strengthening and improving the indigent defense system. The most critical elements, according to Fabelo, are maintaining an independent oversight body (TFID) and the manner in which counsel is appointed. Other key areas of focus are the qualification and supervision of counsel, compensation of counsel, eligibility and prompt assignment of counsel, support and investigative services, and accountability. Fabelo went on to recommend that TFID be expanded to include two public defenders, appointed by the Governor, and become independent of OCA, with OCA maintaining administrative support only.

Judge Sharon Keller, Chair, TFID and Presiding Judge, Court of Criminal Appeals testified that indigent defense in Texas has been vastly improved since the inception of the FDA in 2001. Echoing Dr. Fabelo's testimony, Judge Keller stated that despite the gains that have been made, there are still challenges to be addressed. TFID is committed to addressing these future challenges and is focused on keeping the progress of indigent defense going. One specific challenge facing TFID is the need to address how to sustain and replicate good programs at the county level. TFID and the State must not burden counties more than necessary and additional funding is needed to help counties implement and maintain these programs. Keller also stressed the key role counties play in advancing the progress of indigent defense programs, stating that TFID must be receptive to input and new ideas from counties. Judge Keller then asked that the Legislature provide some direction as to how indigent defense programs are funded and define the scope of TFID and the structure of its Board.

Jim Bethke, Director, TFID testified that the successes of TFID and indigent defense in Texas has been a result of widespread collaboration of agencies, advocate groups and other criminal justice stakeholders. Bethke went on to provide that some public defender offices are being overwhelmed by high caseloads. Discussion between members and Bethke then pointed to offices where indigent defense services are being underutilized. Bethke suggested that the Legislature provide TFID with more tools to promote compliance with the *Fair Defense Act*. Senator Hinojosa went on to state public defense services were being underutilized in some counties due to appointment of private attorneys by the court, rather than public defenders, to indigent defendants. Senator Hinojosa went on to suggest that a standard of appointment be enacted to limit the fees

charged by private attorneys appointed by the court not to exceed those charged by public defenders. That standard of appointment should also include that a judge be required to state why private counsel was appointed, rather than a public defender provided by the county.

A discussion followed regarding the increasing costs of indigent defense. Bethke provided that real indigent defense costs, not accounting for inflation and increased caseloads, have doubled from \$91 million in 2001 to over \$180 million in 2009. Of that \$90 million in increased costs since 2001, the State has provided \$30 million and the counties have supplied the additional \$60 million. Given this disproportion of funding, Bethke stated that TFID is exploring ways in which the State can share more of the costs with counties. Bethke went on to echo previous testimony that, despite the great progress that has been made, among the ten largest states (in population) Texas still ranks tenth in per capita indigent defense spending.

Jim Allison, General Counsel, County Judges and Commissioners Association of Texas testified to the significant progress made by Texas since the passage of the FDA. Stating that prior to the FDA, Texas had virtually no indigent defense system. Today, according to Allison, Texas has one of the more advanced indigent defense systems in the nation. Allison went on to state that the ultimate responsibility of ensuring adequate counsel for an indigent defendant lies with the judiciary and that it is the responsibility of the Legislature to provide sufficient funding and guidance for the most cost-effective use of indigent defense funds. Allison testified that, since 2001, indigent caseloads have increased by 45 percent, while costs have increased 100 percent. He mentioned that the differences of increased caseloads and costs may be, at least in part, the result of inadequate compensation of counsel. Additionally, inefficiencies in the delivery of services, such as court appointed defense counsel, may be contributing to the elevated costs. These increased costs are something that must be closely reviewed and both the counties and the State must better manage these escalating costs by reducing inefficiencies in the system.

Andrea Marsh, Executive Director, Texas Fair Defense Project provided testimony regarding ongoing challenges with the indigent defense system in Texas. One challenge is a lack of independence for attorneys in the current system. Under current Texas law (Article 26.04, Code of Criminal Procedure) judges are required to screen attorneys who want to be appointed by the court, to make appointments in individual cases, to make compensation decisions for appointed attorneys, and to control access to investigators and experts. These requirements, according to Marsh, are in contrast to the best practice recommendations of the American Bar Association which were established in 2002 after the passage of the FDA. Marsh explained that judges are meant to be objective arbiters and are not involved in matters of prosecution, and therefore should not be involved in matters of the defense either. She went on to mention S.B. 1710, introduced in the 81st Legislature, which would have given counties the option of creating independent counsel assignment systems, rather than using the traditional court appointed system. S.B. 1710 passed the Senate unanimously, but died on the General State calendar.

Marsh went on to testify that appointment rates in misdemeanor cases are still extremely low, compared to felony cases. This is troublesome, according to Marsh, because many misdemeanor defendants are entering pleas without the benefit of counsel and only approximately one-fifth of indigent misdemeanor defendants receive public counsel. Addressing previous discussions, Marsh went on to say that a refusal of appointment by a judge for a defendant who has been released on bond is a violation of the FDA. She went on to note that, currently, there is no mechanism under the FDA to require counties to increase misdemeanor appointments.

A third challenge facing the indigent defense system in Texas is the difficulty of holding local jurisdictions accountable for grant funds delivered by TFID. Currently, roughly 90 percent of the grant funds issued by TFID are state formula grants, while about 10 percent are targeted grants for specialized programs. Marsh testified that the majority of these funds go to assigned counsel systems. This becomes problematic for accountability purposes because it is difficult, within appointed counsel systems, to acquire information regarding these attorneys' caseloads and the quality of representation provided because there is no tracking or supervision requirement. Marsh suggested financial incentives be given to counties to encourage the shift to more accountable public defense systems.

Ana Yanez-Correa, Executive Director, Texas Criminal Justice Coalition opened her testimony stating her support of the recommendations of prior witnesses and endorsement of the collaborative efforts of TFID. Yanez-Correa then testified that an increase in discretionary grant funds would be beneficial to increasing accountability efforts. She recommended that appointed defense attorneys be required to submit information to OCA, such as the types of cases they are assigned to, how many cases they have requested, the compensation they requested and the amount received, services they have requested, and their rates of pleas, convictions and dismissals. In order to collect this additional information, Andrea Marsh interjected, OCA would be required to change its reporting requirements. This new information could then be requested and submitted, according to Yanez-Correa, at no additional cost to the counties or state. Yanez-Correa then recommended setting a minimum caseload standard for appointed attorneys as well as reducing the number of jailable misdemeanors. Reducing jailable misdemeanors, according to Yanez-Correa, would reduce caseloads with no fiscal impact to the state or counties.

Jeanette Kinard, Director, Travis County Mental Health Public Defender Office testified that she has served as both a court appointed attorney as well as a public defender. Kinard elaborated on her service as a Travis County public defender for the mentally ill, stating that client services since the creation of the public defender office have dramatically improved. A large part of this improvement is a result of bringing support staff like social workers and caseworkers to assist attorneys with mentally ill clients. Kinard's office has an annual budgeted caseload of 400 cases. Kinard went on to describe the mental health court in Travis County.

Roger Jefferies, Executive Manager, Travis County Justice and Public Safety Planning testified that because of the mental health public defender office, outcomes for mentally

ill defendants in Travis County have significantly improved due to earlier intervention, the provision of more services, less jail time, and fewer convictions. Jefferies went on to provide that he is in the process of completing an evaluation of the indigent defense system in Travis County and plans on expanding indigent services to assist the veteran's court.

Jeff Blackburn, Chairman, State Bar of Texas Committee on Legal Services to the Poor in Criminal Matters and the Texas Tech Innocence Project Clinic testified to the need for increased funding of indigent defense in Texas. Mr. Blackburn noted that most counties fund their systems using tax based revenue, and given the current economic trends and unlikely nature of tax increases at the county level, adequate funding will no longer be available. As the money runs out, according to Blackburn, counties are going to look for more ways to increase revenue. Examples given by Blackburn would be an increase in the amount of misdemeanor prosecutions which generates revenue for the county, as opposed to the State. To address this challenge, Mr. Blackburn recommended making the FDA significantly more enforceable. He went on to say the court appointed system has created a culture of underachieving legal representation in cases with indigent defendants. Mr. Blackburn stated a public defender system is the best way to eliminate this culture and provide adequate representation of indigent defendants.

Public Testimony

Patrick McCann, representing himself, testified in favor of public defender offices.

Recommendations

Since 2001, indigent defense systems in Texas have dramatically improved. Despite great progress, Texas still ranks in the bottom ten nationwide in indigent defense spending. The committee recommends the following to enhance indigent defense systems across the state:

1. Require the TFID to increase its incentives for jurisdictions to establish public defender offices.
2. Enhance TFID's ability to enforce compliance with the *Fair Defense Act* and track local indigent defense processes by improving data collection and transparency, including reporting on caseloads of appointed counsel and public defenders.
3. Require TFID to adopt policies and standards to improve indigent defense practices, including:
 - a. Standards for ensuring appropriate caseloads for counsel representing indigent defendants;
 - b. Working with the State Bar to develop performance standards for indigent defense counsel; and,
 - c. Standards for ensuring adequate payment for indigent defense services, taking different levels of cost-of-living across the state into account.
4. Allow counties to explore different methods of appointment, including managed assigned counsel programs (S.B. 1710, 81st). This would help to limit the public

- perception of bias within judicial appointment systems and provide local jurisdictions with more flexibility to implement programs which reduce bias and ensure high quality legal defense services.
5. Require counties to track indigent defense practices and meet performance measures of grants issued by TFID.
 6. Require TFID to award more discretionary grant funds for programs that meet or exceed the requirements of the Fair Defense Act. This would promote better practices, more cost-effective solutions, and accountability in establishing and improving indigent defense systems.
 7. Enhance the independence of the TFID by authorizing it to submit Legislative Appropriation Requests separate from the Office of Court Administration. Improve TFID's expertise in defense-related issues by adding two defense lawyer representatives to the Task Force, including a public defender representative.

Interim Charge Four

Study and make recommendations related to municipal jails and other detention facilities that operate without state agency oversight. Identify the number of such facilities and the population detained, as well as best practices for municipal jails. Make recommendations to improve services and consider options for oversight of facilities by the Texas Commission on Jail Standards.

Introduction

The Texas Commission on Jail Standards' (TCJS) web site provides a concise accounting of their history and responsibilities as follows:

The Texas Legislature created the Commission on Jail Standards in 1975 to implement a declared state policy that all county jail facilities conform to minimum standards of construction, maintenance and operation. In 1983, the Texas Legislature expanded the jurisdiction of the Commission to include county and municipal jails operated under vendor contract. In 1991, the Texas Legislature added the requirement for count, payment, and transfer of inmates when precipitated by crowded conditions as well as expanding the Commission's role of consultation and technical assistance. In 1993, the legislative function expanded the role of the Commission again by requiring that it provide consultation and technical assistance for the State Jail program. In 1997, the Texas legislature affirmed that counties, municipalities and private vendors housing out-of-state inmates are within the Commission's jurisdiction. It is the duty of the Commission to promulgate reasonable written rules and procedures establishing minimum standards, inspection procedures, enforcement policies and technical assistance for:

1. the construction, equipment, maintenance, and operation of jail facilities under its jurisdiction;
2. the custody, care and treatment of inmates;
3. Programs of rehabilitation, education, and recreation for inmates confined in county and municipal jail facilities under its jurisdiction.

In 1983 the 68th Legislature adopted House Concurrent Resolution number 247 directing the TCJS to promulgate reasonable rules and procedures establishing model minimum standards for municipal jails; to furnish and enumeration of municipal jails; and to furnish the 69th Legislature its findings. Their findings were published in a report titled "Report on Municipal Jails by the Texas Commission on Jail Standards to the 69th Legislature" and contained the following conclusions and recommendations:

1. All detention facilities in Texas, except municipal facilities, are monitored by some state agency and must comply with certain standards; it follows that municipal detention facilities should be operated similarly.

2. While most municipal detention facilities are short term lockups they do deprive citizens of their freedom of movement and the owners of those facilities then become responsible for the safety and welfare of those individuals.
3. In most cases the municipal authorities want to carry out this responsibility. Adoption of these standards will assist in that endeavor.
4. TCJS recommends these standards become mandatory and enforceable with provisions for inspections, enforcement, variances, rulemaking and contested cases and that TCJS be staffed and funded to do so.

No significant actions resulted from this study nor where the recommendations amended into state law. Since the adoption and funding of TCJS in 1975, a discussion of adding municipal jails to their jurisdiction has regularly occurred during subsequent legislative sessions.

Currently the only requirement for municipal jails to report their existence to the TCJS is contained in Section 511.009 (a) (12) of the Government Code. It "requires the chief jailer of each municipal lockup submit to TCJS, on a form prescribed by TCJS, and annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups".

Municipal Jail Discussion and Hearing

The Senate Criminal Justice Committee conducted a public hearing on this charge on September 7, 2010 in Austin, Texas. Chairman Whitmire gaveled the meeting to order and called the first invited witness.

Invited Testimony

Brandon Wood, Assistant Director, Texas Commission on Jail Standards, provided that their jurisdiction is primarily over county jails and other private providers that house state inmates and out of state inmates. Only municipal jails that house inmates under contract with a county, with this state or another state fall under their oversight. He later clarified to the committee in an email that only three municipal facilities are currently under TCJS oversight as they house either county or federal inmates. A facility that only houses federal inmates is also not under TCJS oversight but is monitored by the Federal Bureau of prison, just as all state prisons are solely under the oversight of the Texas Department of Corrections. He continued testimony as follows:

- Municipalities are authorized to operate jails but there is no oversight agency at the state level.
- There are approximately 850 police departments within the state and that approximately 350 of these operate some type of holding or detention facility.
- TCJS often receives complaints about municipal jails which they refer to the city that operates them for resolution.

Mr. Wood concluded by recommending that municipalities that house inmate up to 72 hours be required to have certification for staff, adopt minimum jail standards, submit to independent outside inspections and audits of facilities and operations.

Donna Klaeger, County Judge, Burnet County, Chair of the Texas Commission on Jail Standards echoed Mr. Wood's recommendations and added that municipal facilities should have minimal standards and oversight.

Timothy Braaten, Executive Director, Texas Commission on Law enforcement Officer Standards and Education (TCLEOSE) provided that the jailers who are employed in a county jail are licensed by TCLEOSE but jailers in a municipal jail are unregulated. He added that there are approximately 25,000 licensed county jailers and around 200 licensed contract (private facilities) jailers. TCLEOSE does not maintain any records on municipal jails and receives very few complaints about them.

Dave Barber, Police Chief, Hedwig Village Police Department (HVPD), testified on behalf of his agency and the Texas Police Chief's Association (TPCA) provided that municipal jails are a necessity but serve a completely different purpose than county jails. He continued as follows:

- Approximately two thirds of the arrests made by HVPD are for class C misdemeanors and that in some of these arrests the individual must be held for a period of time due to intoxication or outstanding warrants.
- If HVPD had to transport these prisoners to the Harris County Jail it would cost the city \$75 a day and use up valuable street time for his officer.
- He is in opposition to placing municipal jails under TCJS due to the cost of the city to upgrade facility to meet standards and the cost to the state to expand oversight.
- HVPD operated an 8 bed jail without full time jailers which is greatly different from that operated by the Houston Police Department, which houses over 400 prisoners and has full time jailers.
- HVPD will only detain an offender for 56 hours and relies on medical staff and judges who are on call if needed, often their jail is vacant.

Chief Barber concluded by providing that **TPCA has developed best practices standards for municipal jail management.** These are tailored to holding facilities, which is vastly different from county jails which are housing facilities. These cover such areas as separation of prisoner (gender and age), visitation, fire protection for jail cell area, evacuation plan for jail cell area, prisoner's property and release process, jail cell inspection each shift, and visual observation of prisoner as well as other important practices.

Patrick Dougherty, Lieutenant, Houston Police Department (HPD) testified that HPD operates one of the largest municipal jails in this country, with over 400 prisoners in two main jails and five lockups. Within 23 hours over half of these prisoners are transferred to the Harris County Jail, with the others being bonded out or discharged (paid fine). He

recommended that Texas create a set of standards for municipal jails using the best practices, keeping in mind that municipal jails are aligned with the Police Department, not the courts.

Kristin Swanson Spivey, Interim Director, Municipal Jail Association of Texas (MJAT) testified that MJAT provides training for municipal detention officers to ensure that the facilities are safe and well run. She stated that the 40 hour course of instructions includes the areas of use of force, crisis intervention, prisoner's rights, and contraband control and gang recognition. She recommended standardized, certified training either through their organization or extension services and community colleges.

Public Testimony

Ana Yanez-Correa, Executive Director, Texas Criminal Justice Coalition (TDJC), recommended a state law limiting the number of hours a person could be held or detained in a municipal jail. She stated was prepared to offer 72 hours but based on Chief Barber comments, 56 hours was appropriate.

Written Testimony

Russell Kerbow, Police Chief, Lewisville Police Department (LPD), submitted written testimony in which he recommended as follows:

- In order to determine the number of facilities and those detained, require registration of the jail with the State and an annual report of the average number of persons detained per day and the average number of hours held prior to release.
- Adopt the "Best Practices" as defined by the TPCA for use by all municipal jails keeping in mind that agencies lacking resources may need to be "grandfathered" or need funds from the state in order to achieve the physical changes necessary to meet standards.
- Avoid requiring municipal jails or temporary holding facilities to meet the same standards as required by the commission. The costs are unreasonable unless the state is willing to provide a funding source. Current staffing by the TCJS is unable to keep pace with the county jails so they most certainly will need additional staffing in order to take on inspection of municipal jails.

Gregory W. Rushin, Police Chief, Plano Police Department (PPD), submitted written testimony in which he concludes that:

- I agree that minimum standards for municipal jails might be beneficial to ensure the welfare of citizens taken into custody at all such facilities throughout the state.
- However, the difference between these short-term holding center and county jails must be taken into consideration, along with the unfunded mandate in terms of increase one time and ongoing costs this would create for all cities in Texas with municipal jails.

Recommendations

In reviewing the current status of municipal jails, many of the disturbing conditions that were noted in the "Report to the 69th Legislature on Municipal Jails" still exist today. This committee also agrees with a conclusion from that report that "While most municipal detention facilities are short term lockups they do deprive citizens of their freedom of movement and the owners of those facilities then become responsible for the safety and welfare of those individuals".

Relying on the good faith efforts of city governments, civil right lawsuits and police investigation after accidents or tragedy have not prevented the death while in custody (Office of Attorney General Report) of 66 individuals in municipal lockups, during the last five years. Even given the fiscal restraints faced during the coming legislative session, Texas needs to take positive action to ensure the safety of prisoners and encourage compliance with best practices in the management of these facilities. This committee recommends amendments to the statute governing the TCJS to:

1. In order to determine the exact number of facilities, the specific type (holder, cell, locking bench) and who is detained, require registration of the jail with the Texas Commission on Jail Standards. Also within this registration require an annual report of the average number of persons detained per day and the average number of hours held prior to release and a description of how the facility operates. Each municipality should be required to report any and all such facilities within its jurisdiction.
2. Adopt the "Best Practices" as defined by the TPCA (attachment one) for use by all municipal jails and as an element of the above registration, require certification that the municipal jails, holdovers, etc. are in compliance and if not, what actions are being implemented to obtain compliance. Those municipal jails not in compliance should be required, at the time of submission of the information called for in recommendation 1 (above), to submit their progress toward compliance, their reasons for lack of attainment and obstacles to achievement, the steps that will be taken to achieve compliance, and the date of their projected compliance.
3. All reports from municipal jails to TCJS should be freely available to the public on their website.

Attachment one

CHAPTER 10

ARRESTEE PROCESSING AND TRANSPORTATION

Individuals taken into custody must be safely transported to a detention facility and held in a manner that meets constitutional standards. Proper transportation procedures also ensure the safety of officers and detentions personnel. Applicability of these standards depends on the type holding facility an agency employs.

If an agency operates a holding facility where individuals are booked in, locked in a cell or holding room, and leaves the prisoner alone for any period of time; the agency must comply with all standards in this chapter. Note: an interrogation room where an officer is always present would not be considered a holding facility unless the officer leaves the building.

If an Agency does not have a locking holding facility, where prisoners are booked in and kept without constant supervision, and instead uses another agency facility (such as the County Sheriff), they may show most of Chapter 10 as "NA" (Not Applicable), IF the holding facility used is subject to the Texas State Jail Standards Act. If the agency used by the Candidate Agency to hold prisoners is not subject to the Texas State Jail Standards Act, the agency must comply with all of Chapter 10.

In order to show the Candidate Agency does not have a holding facility, the Agency may provide a copy of the contract with the Holding Agency, a copy of any law, rule or ordinance by competent authority designating the holding facility for the agency, or a letter from the CEO of the agency holding the prisoners that they are subject to the Texas State Jail Standards Act.

Standards Applicable to All Agencies: Standards 10.01.1, 10.02.1, and 10.03.1 still apply to the Candidate Agency. Standard 10.10.1 still applies to the Candidate Agency to the extent that the prisoner's property is cared for until released to the holding agency. Standard 10.12.1 still applies to the Candidate Agency to the extent that officers are instructed on how and when to obtain medical aid for a prisoner prior to release to the holding agency. If the agency authorizes strip or body cavity searches before reaching the jail, the agency must comply with 10.14.1 and 10.15.1. Standard 10.22.1 is applicable to the agency and the agency must address the standard unless the agency can show where a receiving agency has a policy to comply with the standard.

10.01.1 Searching and Transport (E)

The Agency has a written directive addressing searching and transporting adult prisoners. The written directive includes at a minimum:

- a. That all adult arrested persons be searched before any transport.
- b. The approved methods of how to safely transport arrested persons.
- c. Methods or actions for transporting sick, injured, or disabled arrested persons.
- d. Search of the transporting vehicle before and after the transport.
- e. The proper use of any restraining devices.
- f. Monitoring of the prisoner to avoid medical difficulties.

Training of agency personnel in searching and transportation of prisoners is also required.

Discussion: None

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers.

10.02.1 Juveniles – Arrest, Detention, and Transportation (E)

The Agency has a written directive regarding the arrest, detention and transportation of juveniles. The written directive includes:

- a. The rights of arrested juveniles.
- b. The searching of juveniles.
- c. The methods of transporting juveniles to detention.
- d. The use of restraints and monitoring of the prisoner.
- e. Approved methods and locations of detention.
- f. The development, control, and separate storage of juvenile files.

Discussion: Juvenile files should be kept separate from adult files as required by the Texas Family Code. This can be accomplished by filing them in a separate file cabinet or drawer or on a separate shelf. All files (including juvenile files) must be kept secure. The requirement that records be kept secure includes being secured from unauthorized access by agency employees. This requires the records to be kept in locked cabinets or rooms with only limited access by designated individuals.

Agency directives should cover rights of juveniles, arrest, detention, searching, and transporting juveniles as well.

Proof of Compliance

- Copy of written directive(s) addressing all requirements, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers.

10.03.1 Approval of Juvenile Holding Area (V)

The Agency has written approval from a juvenile court judge, or juvenile board as provided for in the Texas Family code, for the holding and processing area for juvenile arrest, if used.

Discussion: None

Proof of Compliance

- Copy of written approval from juvenile court judge or Juvenile Board, **and**
- Copy of juvenile holding log showing time held, **and**
- Observe holding area for appropriate separation from adult processing, On-Site.

10.04.1 Separation of Prisoners (V)

The Agency provides for the cell separation of male and female prisoners. The Agency also provides sight and sound separation between arrested adults and juveniles.

Discussion: None

Proof of Compliance

- Observe sight and sound separation for between adult prisoners and juveniles, On-Site, **and**
- Copy of directive requiring separation of male and female prisoners, if any.

10.05.1 Jail Cells (V)

The Agency has a written directive to instruct personnel on the operation of jail area and cells.

Discussion: None

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Observe operation of Jail area/cells, On-Site.

10.06.1 Access to the Jail Cell Area (V)

The Agency has a written directive to control access of non-essential persons to the Jail area.

Discussion: None

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**

--Observe access control procedures, On-Site.

10.07.1 Visitors (V)

The Agency has written directive for prisoner visitations, including procedures for attorneys.

Discussion: None

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Observe area and process for attorney/client visits, On-Site.

10.08.1 Fire Protection for Jail Cell Area (V)

The Agency has a fire protection plan for the Jail cell area. At a minimum the plan should include having fire detection devices and fire extinguishers available for immediate use.

Discussion: A minimum of at least two fire detection devices and at least two properly charged and inspected fire extinguishers are required. The fire detection devices should be able to alert on duty staff without relying on prisoner intervention.

Proof of Compliance

- Observe fire detection devices, **and**
- Observe existence of fire extinguishers (at least two) or other fire suppression System, **and**
- Observe fire suppression equipment inspection is current.

10.09.1 Evacuation Plan for Jail Cell Area (V)

The Agency has a fire evacuation plan posted in the Jail cell area.

Discussion: None

Proof of Compliance

- Observe plan is posted and visible to personnel

10.10.1 Prisoner's Property Release (V)

The Agency has a written directive to secure a prisoner's property and return the property to the prisoner upon release, or if transferred, the prisoner's property may be released to the receiving agency.

Discussion: If agency does not have a jail, the agency must still have written directive regarding handling of prisoner's property from time of arrest until turning over prisoner to holding agency.

Prisoner's property should be secured from access by unauthorized individuals who might be present in the jail, such as other prisoners, cleaning personnel, and visitors.

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Observe security procedures for prisoner's property, On-Site, **and**
- Observe secure location for prisoner's property, On-Site.

10.11.1 Prisoner Identification Procedure (V)

The Agency has a written directive requiring verification of the identity of any prisoner prior to release or transfer.

Discussion: None

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Observation of intake and outtake procedures and documentation, On-Site, **and**
- Observation of identification verification procedures, On-Site.

10.12.1 Medical Assistance for Prisoners (V)

The Agency has written directive instructing personnel how to obtain medical assistance for ill or injured prisoners.

Discussion: If agency does not have jail, the agency must still have a directive outlining how to obtain medical attention for a prisoner prior to delivery to the holding agency.

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Copy of any injured prisoner reports, **and**
- Interview staff regarding how to summon aid, On-Site.

10.13.1 Medication for Prisoners (V)

The Agency has a written directive for prisoner medication if kept on site. The directive includes providing for proper storage, security, and distribution of the medication.

Discussion: Proper storage and security of prisoner's medications should include keeping medications secure from unauthorized individuals and the proper storage of medications such as those requiring refrigeration. Responsibility for distribution of required medications must also be addressed.

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Observation of documentation for medication dispersal to prisoners, On-Site, **and**
- Observe storage of medication, On-Site.

10.14.1 Strip Searches (E)

The Agency has a written directive that requires supervisory approval, and complies with Texas law, regarding the strip searches of arrested persons. Personnel of the same sex as the arrested person will conduct these searches.

The Agency has a written directive regarding the strip searches of arrested persons that requires supervisory approval of each search. Personnel of the same sex as the arrested person will conduct these searches.

This Standard Statement effective January 1, 2011

Discussion: If the agency does not have a jail, the agency should have a written directive either prohibiting agency personnel from conducting a strip search or provides direction on process of conducting search prior to delivery of subject to the holding facility. Strip searches should never be conducted in the field but only in a controlled environment, with supervisory approval of each search, and conducted by persons of the same sex.

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Copy of any supervisory approved searches, **and**
- Interview personnel on Strip Search procedures and location, On-Site.

10.15.1 Body Cavity Searches (E)

The Agency has a written directive that requires supervisory approval, and complies with Texas law, regarding the body cavity searches of arrested persons. These searches are more involved than a strip search and will be conducted by medically trained personnel.

The Agency has a written directive regarding the body cavity searches of arrested persons that requires supervisory approval of each search. These searches are more involved than a strip search and will be conducted by medically trained personnel.

This Standard Statement effective January 1, 2011

Discussion: If the agency does not have a jail, the agency should have a written directive either prohibiting agency personnel from conducting a body cavity search or provides direction on process of conducting search prior to delivery of subject to the holding facility.

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Copy of any supervisory approved searches, **and**
- Interview personnel on Body Cavity Search procedures and location, On-Site.

10.16.1 Jail Cell Area Key Control (V)

The agency has a written directive for controlling access to keys for securing the Jail cells and book-in area.

Discussion: None

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Observation of key control access, On-Site.

10.17.1 Prisoner Escapes (E)

The Agency has a written directive for a procedure if a prisoner escapes from custody within the jail area.

Discussion: None

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers.

10.18.1 Jail Cell Area Inspection (V)

The Agency requires a documented physical inspection of the Jail cell area at the beginning of each shift, and requires a search of each cell prior to a prisoner being placed in the cell. The inspection is to determine any security or sanitation concerns, and locate any contraband in the Jail cell area.

Discussion: This requirement applies only where a prisoner is being placed into an empty cell. It does not require the removal of prisoners from a cell and search of the cell when an additional prisoner is being placed into a cell containing other prisoners. For safety, agencies should have policies where cells that are occupied by multiple prisoners for long periods of time are periodically cleared and searched for weapons or contraband.

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Review inspection documentation, On-Site, **and**
- Observe conduct of inspections, on-Site.

10.19.1 Minimum Standards for Jail Cell Area (V)

The Agency Jail cell area provides prisoners with access to water and toilet facilities. Access to food will be provided to prisoners who are detained through normal meal times.

Discussion: None

Proof of Compliance

- Observe access to water and toilet facilities, On-Site, **and**
- Observe access to food, if applicable, On-Site, **and**
- Interview staff or prisoners regarding access to necessities, on-Site.

10.20.1 Visual Observation of Prisoners (V)

The Agency requires that agency personnel should visually observe prisoners every 30 minutes as workloads allow but not to exceed one hour. The observation must be documented and can be in person or by a monitored camera system. Documented observations of prisoners who may be considered security risks, suicidal, experiencing unusual behavior, or other causes for concern by agency staff will occur every 30 minutes.

Discussion: None

Proof of Compliance

- Observation of prisoner checks conducted at least every hour, On-Site, **and**
- Review documentation of prisoner checks, On-Site, **and**
- Observation of prisoner checks on prisoners causing concern every 30 minutes, On-Site.

10.21.1 Weapons in the Jail Cell Area (V)

The Agency does not permit firearms to be carried into the Jail cell area. Some less than lethal weapons, such as pepper spray, may be carried in the area if authorized in a written directive by the Agency.

Discussion: None

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Observe approved weapon storage lockers, On-Site, **and**
- Verify if any less than lethal weapons are authorized in writing, On-Site.

10.22.1 Consular Notifications (E)

The Agency has a written directive which requires appropriate consular notification after the arrest of any foreign national.

Discussion: Required by United States Treaty. If another agency is responsible for this notification, the Candidate Agency may not be responsible and may show this standard as NA. Candidate Agency should show proof other receiving agency has policy or practice to comply.

Proof of Compliance

- Copy of written directive, **and**
- Proof of training of officers in policy, **or**
- Proof of receipt of copy of policy by officers, **and**
- Copy of arrest document showing individual advised of right or actual consular contact.

Interim Charge Five

Review the detention of juvenile offenders in local jails, state jails, and Texas Department of Criminal Justice prison units by examining conditions of confinement, including quality of education, mental health treatment and medical services, rehabilitative treatment, and equality of access to services for young female inmates. Review access to administrative and inspector general grievances in TDCJ facilities. Make recommendations for improving the system and reduce recidivism of juvenile offenders.

Introduction

Juveniles in Texas, depending on what they are in trouble for and how often they have been in trouble can be housed in different types of detention centers within the Texas system. The majority of the juveniles that are in need of detention in Texas are there awaiting adjudication, some for post adjudication punishment or treatment, and the rest are incarcerated as a result of a probation violation. This population is housed in juvenile detention centers across the state.

The next largest number of incarcerated juveniles are in the Texas Youth Commission (TYC). These juveniles are sentenced by a judge or through plea bargains to sentences of incarceration. After the changes of SB 103 all of the juveniles now housed in TYC are felons. Many of the juveniles once housed in TYC are being kept in their counties and participating in some of the new programs developed in order to assist youth closer to their homes. TYC much like the juvenile detention centers are designed specifically for juveniles. There is no chance of juveniles commingling with adult offenders in either place because there are no adult offenders.

Local jails also house juvenile offenders on occasion, however they are not intended to. When this occurs juveniles are to be separated and transferred to a juvenile facility as soon as possible. There is very little information on juveniles in local jails. The commission on Jail Standards issues a report regarding juveniles in local jails, but it is not very clear. The amount of time spent in local jails by juvenile offenders is so low that there are no special programs or treatment for them there.

Juvenile offenders are also housed in state jails run by the Texas Department of Criminal Justice (TDCJ). There are currently no females in state jail, but there are 22 males. The State Jail system has no programming or treatment; therefore, juvenile offenders receive no special services if they are sentenced to state jail. In addition juvenile offenders are assigned to housing the same way as any other offender. They are housed in the front of the dormitory, but still with older offenders. There are individuals who are kept in safe keeping, away from the general population, for extenuating circumstances.

There are also juvenile offenders in the TDCJ correctional institutions division (CID). These offenders receive educational programming and treatment. They are housed separately from the adults. However, they are required to adhere to the same rules and

regulations as the adult offenders. They also utilize the same grievance process. Once these offender reach 18 years of age they are moved to the general population with the other adult offenders.

The Senate Criminal Justice Committee conducted a public hearing on this charge on Thursday, April 29, 2010.

Invited testimony

Cherie Townsend, Executive Commissioner, TYC, testified regarding the programs and population at TYC. She stated that 31 percent of the TYC population consists of youth with more than one felony conviction. She stated that a major challenge of the institution was addressing the reading and math levels of incarcerated youth. According to Townsend the average youth in TYC is reading at a sixth grade level, which is four years behind. Their math level is approximately 5 years behind. One contributor to the lower education levels is the percentage of youth with mental health issues or requiring special education. Townsend stated that between 34 percent and 36 percent of the youth have been identified as being eligible for special education, 37 percent have serious mental health problems, 47 percent have substance abuse problems, and 75 percent are in need of one or more specialized treatment intervention. The data illustrates the complexity and challenges with rehabilitating such a population.

In order to address the needs of the TYC population Townsend reports that the focus of the institution has been to focus on creating a therapeutic environments, which focuses on skills training and individualized treatment plans. She states that conditions of confinement and education have been improved by increasing the number of staff training hours, ensuring the ratio of 12 youth to 1 juvenile correction officer, requiring all teachers to be certified in the subject they instruct, and increasing the number of hours youth are in a classroom. She also states that TYC has contracted with Navarro College to provide dual credit classes to youth.

Townsend testified that specialized treatment, such as the capital offender and serious violent offender program, were now available for 158 females in the residential institutions. In addition drug and alcohol and sex offender treatment are now available for females. She also stated that the increase in trauma informed care and mental health services would greatly benefit the female populations because they have a higher rate of occurrence of sexual abuse and mental health problems. **She also emphasized the utilization of more evidence based practices and more family involvement.**

Townsend also stated that TYC would begin practicing **Positive Behavioral Interventions and Supports**. She recommended a greater focus on more individualized reentry programs. Many positive steps have been taken to improve the conditions and rehabilitation of the 1483 youth inside of TYC. However there was no update regarding the classification of youth.

Brad Livingston, Executive Director, TDCJ; testified regarding the juvenile offenders certified as adults within TDCJ. There are currently 136 offenders in TDCJ under the age of 18. There are 110 in CID, 22 in state jail, and 4 in substance abuse felony punishment facility. Of the 136 youthful offenders within TDCJ 5 are females. There are no females in state jail, 1 female in SAFF, and 4 in CID. Male offenders are at the Clements unit and female offenders are at the Hilltop unit.

Livingston testified that for the offenders under 18 there is a youthful offenders program, COURAGE (Challenge, Opportunity, Understanding, Respect, Acceptance, Growth, and Education). The COURAGE program, which he testified had gone under substantial changes over the past 2 years, is intended to assist youth in transitioning into the community or into TDCJ. The focus of COURAGE is education and life skills. Livingston testified that it was held in a highly structured environment separate from the adults. Any youth entering TDCJ CID under the age of 18 is entered into the COURAGE program and remains in the program until they are 18.

In addition to COURAGE, TDCJ has two other youthful offender programs, one specifically for females. Voices: A program of Self- Discovery and Empowerment for Girls is designed to help girls understand the experiences associated with being a girl. It also focuses on teaching girls to relate to others, and learn coping skills. The other program for both males and female is the Skills for Living: Group Counseling Activities for Young Adolescents. This program is another life skills curriculum provided in a group setting. It focuses on relationships, family situations, self-esteem, communication, stress management, anger management, school success, and grief and loss.

Livingston also testified that the reports of sexual assault among youthful offenders had dropped significantly in the past three years. He credited the reduction to the safe prisons program.

Vicki Spriggs, Executive Director of the Texas Juvenile Probation Commission (TJPC); testified all juvenile offenders in facilities are screened for mental health issues within 48 hours of entrance. Every juvenile probation department is required to have a suicide protocol in addition to the other standards and conditions of confinement. Currently there are 3,091 incarcerated juveniles within facilities in Texas. 1,669 are in pre adjudication facilities and 1,422 are in post adjudication facilities. There is one facility that specializes in pregnant females. There are approximately 307 incarcerated females in pre adjudicated facilities, and 173 females in post adjudicated facilities.

Spriggs also stated that the number of certified juveniles has stabilized over the past four years.

Dee Wilson, Executive Director of Reentry and Integration Division, TDCJ, testified regarding continuity of care for youthful offenders. She stated the importance this had for females considering more female are affected by mental health issues. She provided two examples of the increased continuity of care. First beginning May 1, 2010 TYC would be providing Texas Correctional Office on Offenders with Medical and Mental Impairments

(TCOOMMI) a list of all admissions in order to cross reference individual to provide complete information. Secondly she stated that Mental Health and Mental Retardation (MHMR) providers now have access the institutions' medical records through TCOOMI, which will also allow for better continuity of care.

Public testimony

Ana Yanez-Correa, TCJC, stated that The Commission on Jail Standard does not currently have a way of determining how many juveniles are in their facilities. She also stated that the COURAGE program at TDCJ had been criticized in past years for not being affective. She reported that many of the offenders where returned to TDCJ for new offences. The recidivism rate is the a strong indicator if the strength of a program. She stated that within educational programs certified juveniles and adult were not always separated. She also states there had been five reported incidents of sexual assault among youthful offenders. She recommended that better separation be considered. She also recommended an independent entity review all grievances at TDCJ.

Clifford Gray, representing himself, testified about the importance of treatment and prevention. He emphasized the importance of the appropriate mentality for those dealing with individuals with mental health issues, which is determined mostly by the proper education. Education regarding the realities of mental illnesses for the public as well as law enforcement is crucial. In addition he emphasized teaching those affected by mental illness about their mental illness and how to manage it.

Jodie Smith, Texans Care for Children, testified regarding certified juveniles. She stated that as of December, 2009 only 3 to 4 females under the age of 18 were incarcerated in TDCJ. These females are housed at the Hilltop facility in Gatesville. She stressed an concern regarding the isolation of the female offenders being that they are separated from the adult women.

Smith also testified regarding the education of youthful offenders. She stated that there is currently a waiting list for the COURAGE program and that only 2/3 of the youthful offenders received education while in TDCJ. She also stated that there is approximately 10 percent of the total number of youth certified that do not enter TDCJ. It is likely that this 10 percent is sentences to probation, but there is currently no tracking mechanism to monitor this.

John Moore, independent ombudsman, TYC, also testified at this hearing; however, having just starting in the position the work done had been administrative. There was no data pertaining to this interim charge.

Marc Levin, Texas Public Policy Foundation, stated that the average length of stay for certified youth was 4.6 years. He also suggested review of studies focused on brain development of youth in order to determine whether the state is handling youthful offenders and certification appropriately and whether or not the age threshold for consideration should be moved to 18.

Recommendations

Juvenile offenders have specialized needs. Research also shows that juveniles are more receptive to programs to help prevent recidivism. It is important to keep incarcerated juveniles safe while also providing them opportunities to learn. The systems that have the highest number of juvenile offenders have all worked to develop programs to better assist them, especially the female offenders. It is the recommendation of this committee to:

1. Continue monitoring the wellbeing and recidivism of juvenile offenders.
2. Monitor the specialized programs for females.
3. Maintain better records on juveniles in local jails to ensure they are not being housed too long or with adult offenders.
4. Develop some form of educational programming for juvenile offenders in state jail.
5. Review the housing of juveniles in state jail facilities to monitor whether or not the policy of housing them with general population should be modified.

Interim Charge Six

Study and make recommendations to ensure the accuracy and timeliness of testing done in Texas forensic laboratories, including DNA and blood/alcohol testing. Assess and make recommendations for improving the capacity of Texas criminal laboratories to process evidence, identify ways to reduce the backlog of DNA evidence processing, identify ways to encourage qualified applicants for crime lab jobs, ensure adequate training for new crime lab technicians, ensure the availability of efficient crime lab processing to all regions of the state, and determine the impact of additional collection requirements on the capacity of Texas crime labs to process evidence. Consider the costs and benefits of creating a statewide crime lab.

Introduction

A crime laboratory uses forensic science to examine evidence collected from criminal cases. Crime labs may be publicly or privately operated. Public crime labs are organized at the city, county, state, or national level; private crime labs are not publicly funded and can be outsourced to analyze evidence acquired from a crime scene. Texas has both privately and publicly operated labs that officials rely on to give accurate data. However, a recent controversy surrounding some crime labs in Texas of providing inaccurate test results sparked a change in how they operate. Problems ranging from improper storing of evidence to faulty DNA testing caused serious concern. In response to the surfacing problems, in 2005, Texas passed legislation requiring the Department of Public Safety (DPS) to certify all crime labs, whether public or private. Accreditation has helped ensure professionalism at Texas crime labs, but some problems still exist.

Texas Crime Labs Certified by Texas Department of Public Safety (DPS)

As of April 7th, 2010, there are 44 DPS-accredited crime labs in 26 different locations:

CITY	NAME	PUBLIC/ PRIVATE	OPERATED BY
Abilene	Texas Department of Public Safety Abilene Laboratory	Public	State
Amarillo	Texas Department of Public Safety Amarillo Laboratory	Public	State
Angleton	Brazoria County Crime Laboratory	Public	County
Arlington	Arlington P. D. Crime Laboratory	Public	City
	Armstrong Forensic Laboratory, Inc	Private	
Austin	Austin P. D. Forensic Science Services Division	Public	City
	Texas Department of Public Safety Austin Laboratory	Public	State
	Texas State Fire Marshal's Office Forensic Arson Laboratory	Public	State
	Travis County Medical Examiners	Public	County

	Forensic Toxicology Laboratory		
Beaumont	Jefferson County Regional Crime Laboratory	Public	County
Corpus Christi	Texas Department of Public Safety Corpus Christi Laboratory	Public	State
	Corpus Christi P. D., Forensic Sciences Division	Public	City
Dallas	DEA South Central Laboratory	Public	Federal
	Southwest Institute of Forensic Sciences	Public	County
Deer Park	ExperTox	Private	
El Paso	El Paso P. D. Crime Laboratory	Public	City
	Texas Department of Public Safety El Paso Laboratory	Public	State
Eules	Integrated Forensic Laboratories	Private	
Farmers Branch	Orchid Cellmark Dallas Division	Private	
Fort Worth	Alliance Forensics Laboratory	Private	
	DNA Identity Laboratory	Public	State
	Fort Worth P. D. Crime Laboratory	Public	County
	Tarrant County Medical Examiner's Crime Laboratory	Public	County
	Tarrant County Medical Examiner's Toxicology Laboratory	Public	County
Garland	Texas Department of Public Safety Garland Laboratory	Public	State
Houston	Firearms Identification Laboratory	Public	County
	HPD Crime Laboratory	Public	City
	Joseph A. Jachimczyk Forensic Center	Public	County
	Texas Department of Public Safety Houston Laboratory	Public	State
Huntsville	*Sam Houston State University Crime Lab (*awaiting accreditation)	Public	
Laredo	Texas Department of Public Safety Laredo Laboratory	Public	State
Lubbock	Texas Department of Public Safety Lubbock Laboratory	Public	State
McAllen	Texas Department of Public Safety McAllen Laboratory	Public	State
Midland	Texas Department of Public Safety Midland Laboratory	Public	State
Pasadena	One Source Toxicology	Private	
	Pasadena PD Regional Crime Laboratory	Public	City
Plano	Plano P. D. Crime Scene Investigative	Public	City

	Unit		
San Antonio	Bexar County Forensic Toxicology Laboratory	Public	County
	Bexar County Criminal Investigation Laboratory	Public	County
	DNA Reference Lab	Private	
San Marcos	Texas Parks & Wildlife Law Enforcement Forensic Lab	Public	State
Tyler	Texas Department of Public Safety Tyler Laboratory	Public	State
Waco	Texas Department of Public Safety Waco Laboratory	Public	State

Recent Significant Developments and Documented Problems

- Texas Department of Public Safety Abilene Laboratory
 - o In 2009, the crime lab moved to a new 2,200 square-foot office in the basement of the Law Enforcement Center. The city budgeted about \$340,000 for the project.
 - o Not only does the lab process evidence for Abilene P. D., but analysts process evidence sent by other departments at no charge. The forensic unit regularly assists other agencies such as the FBI, Department of Public Safety, and the Texas Rangers with cases.
- Arlington Police Department Crime Lab
 - o As of July of 2010, the lab has a backlog of 661 DNA cases. That number is down from 1,010 in September of 2007. Cases older than 30 days are considered part of the backlog.
- Austin Police Department Forensic Science Services Division
 - o Former DNA scientist Cecily Hamilton cites 40 issues that need to be addressed in the APD crime lab. In her memorandum, Hamilton described a hostile work environment, favoritism between a supervisor and a co-worker, potential lab work contamination, possible cheating on DNA tests and employees she believed were unqualified to perform certain forensic testing. The Justice Department and Texas Rangers are currently investigating this issue.
- Jefferson County Regional Crime Laboratory
 - o A proposal to remodel the county's existing 5,000-square-foot Crime Lab and add a DNA lab to the facility, located in the county jail complex, has been tabled until next budget season. Crime Lab Director Linda Johnson said the engineering firm commissioners agreed to pay to develop a design for the expansion project is currently working on the plan. Commissioners voted to pay Sigma Engineers \$98,000 in May.
- Southwest Institute of Forensic Sciences

- In October of 2009, Dr. Nulf, a former crime lab employee, filed lawsuit over poor analysis and sloppy science at the Southwest Institute of Forensic Sciences in Dallas. In his complaint, Dr. Nulf cites the following problems: an outdated protocol manual used by analysts to conduct their daily work, equipment that isn't calibrated, analysts using expired chemicals, criminal case files stored in an unsecured hallway, and a fan which blew over areas where evidence is examined.
- El Paso Police Department Crime Laboratory:
 - In October of 2009, **Star-Telegram** obtained records from the American Board of Pathology proving that the head medical examiner in El Paso is not board-certified.
- Fort Worth Police Department Crime Laboratory:
 - In 2001, a review of three years' worth of DNA evidence processed by the Fort Worth Police Department's crime lab was conducted after a proficiency test revealed that a senior forensic scientist did not follow proper procedures and protocol. A two-year investigation has found that nobody was wrongly convicted or accused of a crime because of flawed DNA analysis in the Fort Worth police crime lab. The Tarrant County district attorney's office, however, did find widespread problems in the serology and DNA unit, as well as troubling practices in the lab's chemistry and firearms sections.
- Houston Police Department Crime Lab
 - The Houston crime lab's troubles were first exposed in 2002, when a media investigation discovered a man had been convicted of rape based on misinterpreted DNA results. A state audit of the Houston crime lab the same year noted that many of the analysts working in the serology section lacked basic knowledge of blood typing and recommended an audit of years' worth of blood, semen and other bodily fluid test results.
 - In 2004, the *Houston Chronicle* reported a number of questionable autopsies done by Harris County Medical Examiner Patricia Moore, who colleagues accused of tailoring her findings to please prosecutors.
 - In 2006, another independent investigation found that Houston crime lab analysts skewed reports to fit police theories in several cases, ignoring results that conflicted with police expectations because of a lack of confidence in their own skills or a conscious effort to secure convictions. In more than 20 cases reviewed in this stage of the ongoing probe, the investigative team concluded that analysts at the Houston Police Department crime lab failed to report the results of blood-typing and DNA tests that did not implicate the suspects police had identified.
 - In 2007, lab employees were caught cheating on an open-book proficiency test.
 - In 2010, an independent audit of 548 fingerprint analyses done by the Houston crime lab found "irregularities" in more than half of them. Two

- analysts have been put on leave, one has resigned. The three had worked cases in the lab for a combined 84 years.
- Houston crime labs have also been implicated in the following cases:
 - Sutton Case: convicted rapist later found innocent through DNA exoneration after 25 years of incarceration
 - Sonnier case: convicted rapist later found innocent through DNA exoneration after 23 years of incarceration
 - Texas Department of Public Safety Laredo Laboratory
 - In October of 2009, **Star-Telegram** obtained records from the American Board of Pathology proving that the head medical examiner in Laredo for Webb County is not board-certified.
 - Texas Department of Public Safety Lubbock Laboratory
 - Glen Adams, Department of Public Safety's former blood-testing expert, inaccurate scientific results helped to convict Mr. Moon on three counts of aggravated sexual assault, resulting in a 75-year sentence. Shown by DNA testing to have been wrongly convicted, Mr. Moon was released from prison in 2004. Mr. Adams worked at the Lubbock crime laboratory from 1986 to 1991. The department said that his whereabouts now were unknown.
 - Texas Department of Public Safety McAllen Laboratory
 - There was a temporary closure of the McAllen DPS serology lab due to errors in blood testing.
 - San Antonio Police Department
 - On July 23, 2010, the San Antonio P. D. unveiled its new crime scene investigation unit, a crime lab on wheels. Chief McManus says not only does the vehicle provide them with the equipment they need to process those scenes, but it also provides them with much needed shelter.

Recent National Studies and Recommendation on Best Practices

- **National Academy of Sciences** conducted a two-year study on how forensic evidence used in U.S. courtrooms is evaluated. In their report, NAS recommends that crime labs should be operated independently of law enforcement officials. National Academy of Science further advocates the creation of a national oversight agency that allows scientists to determine the appropriate evidentiary standards and to certify those qualified to render expert opinions.
- In their most recent report to the U.S. House of Representatives, the **American Bar Association** urges that crime laboratories and medical examiner offices should be accredited, examiners should be certified, and procedures should be standardized and published to ensure the validity, reliability, and timely analysis of forensic evidence.

- Forensic Science Communications, a journal published quarterly by FBI Laboratory personnel, conducted a comprehensive report on U.S. crime labs in 2007. The purpose of the study was to document basic personnel information in laboratories, such as total number of staff, educational degrees obtained, hours worked, pay level, overtime, and number of cases processed. It determined that public crime labs are under-funded and overworked, and was increasingly outsourcing their work, mainly DNA cases, to private labs through federal grant money. They further concluded that more data is needed to determine the cost-benefit ratios for private versus public crime labs.
- In their 2008 report, **Texas Criminal Justice Integrity Unit (TCJIU)** advocated for the creation of a traveling DNA lab to improve crime lab reliability. The traveling DNA lab will act as an unannounced check on criminal labs throughout the state of Texas. The traveling DNA lab will arrive at a Texas crime lab without notice to review lab operations. This will include taking samples to be processed and analyzed at a stationary lab. The TCJIU proposes to house the results from the traveling DNA lab with the Texas Forensic Science Commission (TFSC). The traveling DNA lab would provide an additional form of accountability to ensure that Texas crime labs are complying with their professional standards. Legislation supporting this item failed in the 81st Legislative Session.

Crime Lab Discussion and Testimony

The Public Hearing on interim charge six was conducted on September 7, 2010 in Austin, Texas. Chairman Whitmire opened the hearing and stated that the accuracy and timeliness of forensic evidence affects the integrity of the entire criminal justice system. He then called the first invited witness.

Invited Testimony

Patricia Lykos, Harris County District Attorney, provided in written testimony "that Harris County, Texas is the third largest county in the United States; its population is greater than 24 states and its metropolitan area comprises 20% of our state's population. It has 34 municipalities, the largest being the nation's fourth largest city, Houston, and its unincorporated area, if it were a municipality would rival the population of San Antonio.

It is incumbent upon government to be good stewards of taxpayers' money. This is even more urgent in times of economic distress. The question is, how do you best determine budget and spending priorities? The answer must be founded on how do we best protect and serve our people. This requires data and a rigorous analysis of what works best.

I respectfully submit that the Harris County Institute of Forensic Sciences (HCIFS) is a model worthy of study.

The Harris County Institute of Forensic Sciences is located in the Texas Medical Center, which is premier in the world. Researchers from teaching hospitals are cross-trained with the Institute, which maintains a dynamic academic environment where doctors and scientists collaborate and develop the use of DNA in forensic investigation, molecular genetics and medicine; to say that the Institute is cutting-edge is not hyperbole. The Institute is accredited by the:

- *American Society of Crime Laboratory Directors/Laboratory Accreditation Board- International Program, (ASCLD/LAB/ISO)
- *National Association of Medical Examiners, (NAME)
- *Texas Department of Public Safety, (DPS)
- *American Board of Forensic Toxicology, (ABFT)
- *Accreditation Council for Graduate Medical Education, (ACGME)

Forensic DNA testing saves lives and ensures justice. It identifies criminals, provides evidence to convict the guilty, protects the innocent and is cost effective. Our office has provided exonerating evidence in the cases of three (unrelated) convicted people in the past year and half as the result of DNA testing—the testing determined who were the actual predators and investigations showed these sexually violent offenders continued their depredations; they went on to commit kidnappings, robberies, manslaughter and burglaries. Every killer, rapist, robber and burglar arrested, convicted, sentenced and imprisoned makes society safer. Studies show these types of criminals are serial and prolific offenders.

The HCIFS is independent of any law enforcement agency and performs tests for primarily the Sheriff's Office and 65 jurisdictions in the county and surrounding area. It has four distinct forensic disciplines: controlled substances, forensic toxicology, trace evidence and biology, (serology/DNA). Currently, it is processing approximately 3,500 DNA cases, annually, including "touch DNA" which is solving many burglaries. Taking just one burglar off the streets can prevent a couple of hundred crimes a year; and often burglaries-in-progress turn violent.

The Houston Police Department Crime Laboratory is competent, but is severely under-resourced, and it has a serious backlog in DNA testing. The lack of timely testing has resulted in felons fleeing the county before they are identified, and also in delaying trials in cases of violent crimes, which then creates a whole host of problems, such as missing witnesses, etc. The Houston Police Department, (in the midst of budgetary woes), faces the choice of whether to put officers on the streets, or fund and staff a DNA crime lab.

The County and the City are now considering an agreement for the Institute to assume all HPD DNA cases.

1. Recommendations to ensure the accuracy and timeliness of testing done in forensic laboratories.
 - Accuracy

- Establish high qualifications for analysts – both scientists and supervisors of analysts; encourage certification of practitioners.
 - Increase use of robotics.
 - Ensure thorough review of work by peers and management.
 - Utilize fail-safe software systems to minimize opportunities for human errors (e.g., transcription errors, sample errors).
 - Timeliness
 - The use of robotics and other automation such as software avoids repetitive transcription and manual calculations that consume time and manpower.
 - Provide and maintain realistic and appropriate staffing levels.
2. Recommendations for improving the capacity of labs to process evidence
- Encourage use of robotics and software automation.
 - Determine and provide appropriate staffing and facilities for the workload.
 - Productivity oversight and management is an imperative.
3. Identify ways to reduce the backlog of DNA evidence
- Study laboratories such as the HCIFS that do not have a backlog of DNA evidence.
 - Robotics and other automation such as software that avoids repetitive transcription and manual calculations.
 - Batching to optimize productivity.
 - Establish and maintain appropriate staffing levels.
 - Utilize high-throughput equipment.
 - Effective utilization of existing grants to build capacity (rather than use of the funds to temporarily reduce backlogs that will recur).
4. Identify ways to encourage qualified applicants for crime lab jobs.
- Competitive salaries attract qualified candidates.
 - Create a working environment that encourages scientific achievement and rigor.
5. Ways to ensure adequate training for new crime lab technicians.
- Maintain staffing levels sufficient to provide appropriate on-the-job training for new hires.
 - Hire staff with advanced degrees that come to the position with considerable knowledge (these should not be thought of as “technicians” but rather as staff scientists).
 - Establish minimum training standards, create documented training programs and document the training.
 - Establish testing protocols--currently the FBI’s Scientific Working Groups and the National Institute of Justice’s (NIJ) Technical Working Groups develop guidelines.

6. Ways to ensure the availability of efficient crime lab processing to all regions of the state.

- Provide funding to the Harris County Institute of Forensic Sciences, which is a highly accredited, state of the art crime lab that, properly resourced, can rapidly evolve into an independent regional crime lab—currently, the City of Houston is negotiating with Harris County to have HCIFS process all of its DNA evidence; the conundrum being how to pay for the necessary facilities, equipment and staffing to process the City’s backlog and then stay up to date.
- Expand the capability of the 13 State crime labs to conduct various tests required to meet forensic needs for its service areas.
- Study laboratories that are efficient now such as the HCIFS Crime Laboratory that has no backlogs in any area of operations—caveat; the lab must have additional funding just to keep pace with its current obligations.

7. Determine the impact of additional collection requirements on the capacity of labs to process evidence.

- The impact will be to increase backlogs unless capacity and resources are sufficient; it is absolutely essential that the following be provided:
 - Sufficient staffing, equipment, facilities for the increased case load
 - Automation
 - Optimized methodology
 - Highly credentialed staff and management capable of continuous process improvement

8. Consider the costs and benefits of creating a statewide crime lab.

- Texas currently has a statewide system of crime laboratories operated by the Texas Department of Public Safety. The DPS laboratories are excellent and heroically strive to meet demand, but its resources are not sufficient to serve the entire state.
- Substantial increases in resources (and the other suggestions above) are necessary for the DPS laboratories to properly function in the jurisdictions they currently serve.
- Very large increases in resources would be necessary to replace the municipal and county laboratories that now serve urban and suburban jurisdictions.
- Perhaps the initial approach should be to implement the recommendations above, which would improve existing services.
- Whatever decision is made, Texas should have laboratories that meet the highest national standards. To do so requires money; highly educated, trained and skilled personnel; best practices, state of the art equipment and information technology; quality management and monitoring; and accountability.

I am not presumptuous enough to speak for the Department of Public Safety. However, through my long years in the criminal justice system, I have seen the responsibilities of the DPS expanded without commensurate increases in money and personnel and yet they always endeavor to perform the mission. Regarding the DPS Crime Lab, our office

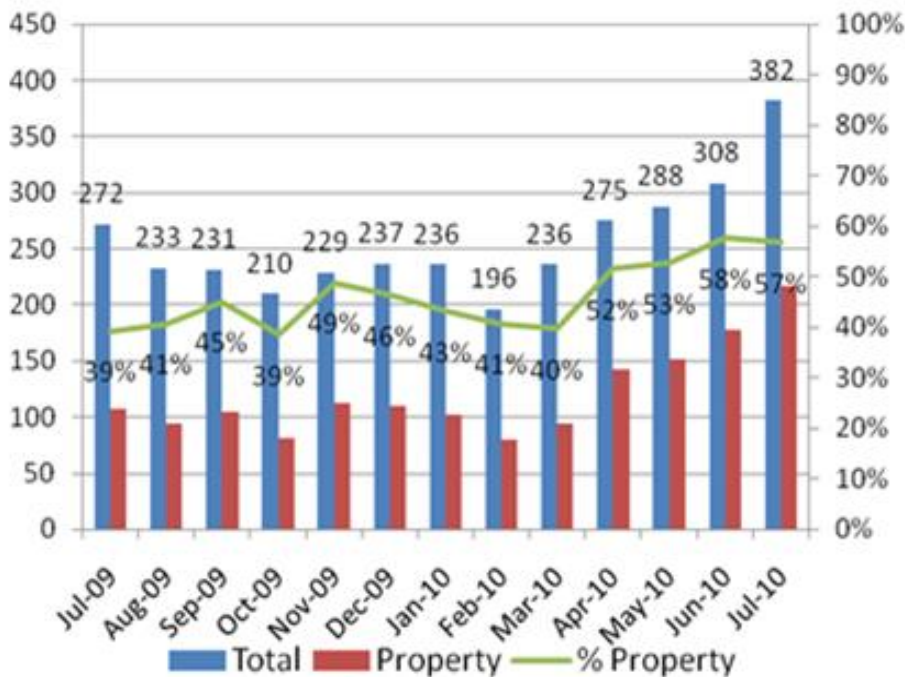
praises the lab for its fine work and is pained by the delay in testing, engendered by the lab's shortage of capacity."

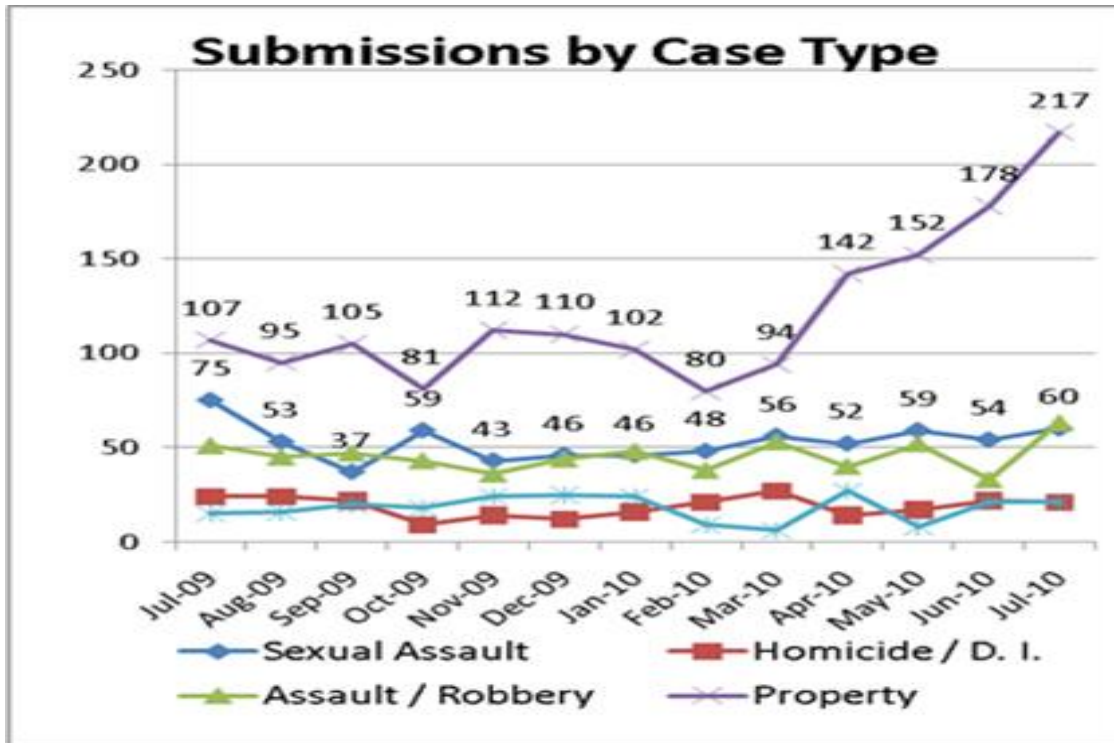
Harris County Institute of Forensic Sciences Forensic Biology Laboratory Workload

The **Harris County Institute of Forensic Sciences Forensic Biology Laboratory** has experienced an increase in the number of cases submitted monthly starting in April 2010. Prior to April, the Laboratory typically received 235 to 240 total cases. The number of cases has risen markedly each month since then and, in July; the Laboratory received a total of 382 cases, a 60% increase from earlier in the year. Property crimes account for most of the increase. The average number of property crime submissions per month has increased from approximately 100 per month at the beginning of the year to 178 and 217 in June and July, respectively.

Projections for August are even higher, with 267 cases having been submitted overall through August 17, 69% of which are from property crimes. The 183 property crimes submitted the first two weeks of August already exceeds the total number of property crimes submitted for the month of June. Small increases in the number of sexual assault and assault/robbery cases have also been noted.

Case Growth July 2009 through July 2010





Steven McCraw, Director, Texas Department of Public Safety (DPS), provided that forensic testing is important in identifying and eliminating suspects and preventing crimes by serial offenders. McCraw added that DPS handles approximately 50 % of the forensic examination in the state and discussed the type of tests that DPS labs conduct. He stated that since 2000, DPS has observed an 80% growth in requests for DNA testing. This has created a time frame of 9.75 months for completion of testing. He labeled this time frame unacceptable, but in order to reduce the time he must have the proper personnel, which takes 18 months to train. He added that DPS currently has 78 DNA forensic examiners and spends over \$26 million dollars in salaries for its forensic personnel.

In response to member's questions, McCraw confirmed that DPS provides testing to small and midsize communities without charge. The Chairman pointed out to him that Houston, the state's largest city, must pay for forensic testing (with local funds) while DPS is providing free testing to the vast majority of state. In response to member's additional questions, McCraw submitted the following written information:

"The Laboratory's Physical Evidence Handbook (PEH), which is available on the DPS Web site <http://www.txdps.state.tx.us/ftp/forms/PEHmanual.pdf>, details the various forensic testing the laboratory performs and how agencies should submit their evidence. It says that we serve all law enforcement agencies in Texas. We do, however, have **unwritten agreements with all of the entities that have their own Laboratories (Austin PD, Bexar Co., Dallas Co., El Paso PD (drugs only), Harris Co., Houston PD, Tarrant Co.) that we will not work their cases.** This has been a mutual agreement

formulated over the years. The Austin Laboratory performs all ten disciplines for which we offer analysis but most labs only offer some or one.

Cost of tests: the only disciplines for which we have specifically determined the cost of testing are Drugs - \$140 per case and DNA – forensic evidence analysis \$977 per case and DNA database analysis \$38 per offender (these costs include salary and operating but not equipment).

We have 331 FTE's in the main Crime Laboratory Service (excludes Breath Test). The number of staff per Lab, value of the facility (most labs are currently part of a larger DPS building but numerous new facilities are under construction), and individual Lab salary budgets are contained in the attachment titled "New Lab Buildings". Total salary budget for FY 11 is \$16.1 million. Our total equipment inventory says the equipment is worth \$22.4 M but that is the new cost of each and does not take into account depreciation. We typically keep instruments 10 years then replace them. A better measure might be that our annual equipment budget for replacements and upgrades is about \$3 million per year.

Cost to gain a 180 day turnaround time on DNA cases: undetermined at this time. We believe that the numerous policies and procedures that are currently being implemented, along with the completion of the new laboratories, will make significant progress on reducing the backlog. It may take another two years to fully realize all of those gains. This is predicated on the premise that there will be no increase in our service areas.

DPS does not have any information about how many cases the other non-DPS Laboratories in the State receive or work in a year. We've based our estimation on the population of our service area. Those non-DPS Laboratories listed above serve most of the major population areas and the combined population of those areas is just under 12 million residents. With a total population of 24.8 million we estimate that we serve 50% of the state. The growth of the need for DNA testing: in year 2000 we received 1,441 new cases, in 2005 we received 3,730 new cases, and in 2009 we received 7,076 new DNA cases. The rate of growth over the past four years has been 20% per year. The absolute number of cases received compared to 2000 is 491%." DPS subsequently provided the following details on reduction of backlogs and cost of services:

What does DPS need to do to decrease the backlog?

The current backlogs of evidence awaiting examination in DPS crime laboratories can all be reduced to acceptable levels (30 to 90 day turnaround time) with existing personnel and resource levels by the end of 2011, with the exception of DNA evidence.

The current backlog of DNA cases awaiting analysis is nearly 5,000 cases. 7,000 new DNA cases were submitted to DPS labs in 2009, and an equal number is projected to be submitted in 2010.

DPS crime labs are projected to complete 6,400 DNA cases in 2010, and with existing resources, are projected to complete 8,000 cases in 2011. With a backlog of 5,000 cases going in to 2011, and 7,000 new cases coming in, a total of 12,000 cases will need analysis. With 8,000 projected to be worked, a backlog at year end of 2011 is projected at 4,000 cases (a six month backlog). To reduce this backlog to a 90 day backlog, or 2,000 cases, will require additional resources.

A recommended solution is to employ twelve (12) additional staff, and to provide them two to three months of training to screen serology/DNA cases. It is anticipated that these screeners can then complete the screening of evidence in twenty cases per month, or about 200 cases per year per person. The screened samples will be forwarded to an existing DNA analyst who will complete the DNA analysis, with the aid of robotic instruments, and report the findings. These twelve new personnel would be expected to enable to completion of the additional 2,000 cases needed to achieve the 90 day service goal, given an assumption that only 7,000 new cases are submitted during 2011. If 8,000 new cases are submitted then an addition five personnel will be needed.

For calendar year 2011, it is expected that an adjustment to a newly awarded National Institute of Justice DNA grant (#2010-DN-BX-K043) could be obtained allowing for the salaries of up to twelve personnel to be paid from the grant. It is anticipated that this adjustment could be obtained during the month of November 2010. Given approval for the additional FTEs, jobs would be posted and the positions filled as soon as possible. These personnel would likely be stationed in the Austin, Garland, and Houston labs, which are the only facilities currently available with sufficient space. DNA cases would be transferred from all eight DPS DNA labs to these three locations as needed to achieve these goals.

For FY 2012-2103, it is recommended that these twelve (12) FTEs be authorized and funded within the LAR so that both any remaining backlog, as well as the expected increases in DNA casework, can be analyzed and reported within no longer than 90 days.

What is the appropriate cost recovery system for recovering from jurisdictions outside of DPS for services provided?

The Crime Laboratory Service can provide the average cost for conducting the analysis of evidence for each forensic discipline. This is an average cost which was determined by dividing the total costs expended for that service in FY 2010 divided by the total number of those cases completed in FY 2010. The costs included were salaries, overtime pay, travel, and operating from the Crime Lab budgets.

Discipline	Average Cost/Case
Drug Analysis	\$ 140
Toxicology	\$ 155
Blood Alcohol	\$ 59

DNA	\$1,206 (includes equipment costs, and most equipment was provided in federal grants. Cost w/o equipment is \$977/case)
Firearms/Tool marks	\$1,481
Latent Prints	\$ 672
Trace Evidence	\$ 865
QD & Digital, Multimedia	\$ 2,388

Comments: Most crime labs who charge for services charge not based upon the cost per case, but upon the cost per sample tested. They have a menu of costs (see attached fee schedule from Bexar County). To charge fees in this manner would be more complicated, but may be necessary with disciplines other than drugs, toxicology, and blood alcohol. For instance, the cost per sample on DNA cases is \$250. A sexual assault case would have around three samples, where a homicide case may have around ten samples.

Irma Rios, Crime Laboratory Director, Houston Police Department (HPD), provided that she was hired in 2003 to revamp and to re-establish the HPD crime lab which was engulfed in major scandals. These resulted in the closing down of its DNA testing and other services in 2002. She stated that the current status of her lab is as follows:

- They were reinstated for submitting samples to the federal DNA data base CODIS in 2007.
- A backlog of 15,000 untested rape kits had been reduced to 4,000.
- The National Institute of Justice (NIJ) provided a grant of \$1.14 million dollars to increase the lab's DNA staff by 50% and to decrease their DNA backlog by 30%.
- HPD was purchasing robotics and improving their communication with the courts and District Attorney's Office using technology.
- In addition to the 4,000 untested rape kits, HPD current backlogs also include 1000 DNA samples, 25,000 narcotic cases, 200 ballistics cases
- The lab receives 1,800 new cases per month.

Ms. Rios was then engaged in a discussion with the committee members concluding that these backlogs negatively impact the prosecution of offenders and public safety. The backlog also means that there are person waiting for test results that will prove their innocence and that the backlogs contribute to jail overcrowding in Harris County.

Jeff Boschwitz, Vice President, Orchid Cellmark (a private for profit crime lab) testified that a partnership between the private and public sectors can eliminate testing backlogs and prevent future backlogs, He further provided that:

- Over the last 10 years his company has tested thousands of cases for the state through contracts with Houston, Harris County and Fort Worth.
- Private labs can provide testing at cheaper rates than public labs.
- Private labs have no hiring constraints and can hire staff to ensure promised contract levels depending on the needs and budgets of their clients.
- Private lab contracts provide guarantees regarding results and cost.
- Charges per sample range from \$250 for property crime testing to \$500 for rape kits and that his laboratory is accredited by all national associations.
- Contracts can establish testing result returns from 30 days to 90 days.

- Cellmark does DNA testing only and provide experts to testify in court if required, but only 2% of cases result in court appearances.

Mr. Boschwitz concluded his remarks by noting that in the United Kingdom, public and private labs complete for contracts and that this has resulted in lower costs and faster results for their criminal justice system, in addition to no backlogs.

Timothy Fallon, Director, Bexar County Crime Laboratory (BCCL), provided that the BCCL is an independent Bexar County facility and provides its service on a fee for services bases. He continued that:

- The BCCL has been in operations since 1997.
- At the end of August 2010, 18 DNA cases were over 30 days old and that the turnaround time is approximately 33 days.
- If a prosecutor requires a test for trial, the BCCL will triage cases.
- The BCCL is responsible only for testing samples submitted to it and does not perform investigations or prosecutions.
- The main complaint against his agency is the fees charged, but that their fees are considerably lower than those charged by many private companies.

Timothy Sliter, Institute of Forensic Sciences in Dallas County (IFSDC), represents both his agency and the Texas Association of Crime Lab Directors (TACLD) provided that IFSDC is an independent agency of Dallas County and provide their services for a fee to most of the cities in Dallas County. He also provided that:

- IFSDC has a backlog for serology test of less than 100 and a backlog in DNA of approximately 400.
- When a rape kit is submitted to IFSDC, the submitting agency has 30 days to request testing and if no request for testing is submitted to IFSDC, the kit is returned to the submitting agency. If testing is requested it is completed in approximately six weeks.
- DNA testing is not completed on a first in first out basis but is based on the needs of the investigator, the District Attorney and when the case is scheduled to trial.
- TACLD considers standardized training of staff an important issue and they recommend a centralized training site such as the one used in California.

Recommendations

On September 28, 2010 the Houston Chronicle reported that "HPD crime lab backlog delays trials, with understaffed crime lab getting 75 new cases a month, fear also is that criminals are still walking the streets." This committee finds that it is simply amazing that a problem, which surfaced in Houston in 2002, is yet to be resolved. During the public hearing it has become very clear that legislative action is required to address the continuing problems associated with Crime labs within Texas. The committee recommends the following actions:

1. All crime labs should be independent of law enforcement, investigators and prosecutors. DPS should ensure that state crime labs are free from influence from other divisions of DPS.
2. A Centralized Training Center for forensic scientist should be pursued under the crime lab division. Such a model would accommodate the accreditation and certification of personnel through standardized procedures.
3. The Legislative Budget Board should be instructed to conduct a study to evaluate the cost benefit ratios of public versus private crime laboratories. It should also review if competitive bidding between them would have a positive influence on testing cost.
4. Inequities exist with state crime labs services being provided free to only half of the citizens and no consideration given to the citizens who support these programs with local funds. State crime lab services should be on a fee recovery basis and legislature mandating such is supported.

Interim Charge Seven

Assess how the Commission on Jail standards, the Department of Public Safety, the Department of Criminal Justice, and Department of State Health Services are working together to identify defendants with mental health issues, notify magistrates when defendants have been identified and, where appropriate, provide crisis stabilization services to defendants. Monitor legislation passed by the 81st Legislature for mental illness and make recommendations for any needed improvements to improve mental health services and reduce recidivisms.

Introduction

During the past decade, the Texas Legislature has enacted numerous policy initiatives designed to enhance identification and diversion strategies for persons with mental illnesses involved with the criminal justice system. As a result, the state has made significant progress in identifying individuals whose behavioral issues could be better served by mental health providers rather than the criminal justice system.

Despite the strides made by the Legislature, a number of factors have impacted the states implementation of several key policy initiatives. Of particular interest is the implementation of SB 839 and SB 1557 enacted during the 80th and 81st Legislative sessions respectively. This section will provide an overview of the Committee's findings as well as recommendations for addressing these issues.

SB 839 Implementation Status

In 2007, the 80th Legislature enacted one of the most significant policy changes in identification practices with the passage of SB 839. This legislation amended the Texas Correctional Office on Medical and Mental Impairments' (TCOOMMI) enabling legislation to include the Texas Department of Public Safety (DPS) in the continuity of care and exchange of confidential information provisions. This change allowed the Department of Health State Services (DSHS) to merge the statewide mental health database with DPS' Texas Law Enforcement Telecommunication System (TLETS). The anticipated outcome was a real time notification at jail intake of a defendant's mental health status, thus improving diversion opportunities early in the process. Due to technology problems, particularly those involving the statewide server conversion initiative, implementation of this activity was delayed for almost two (2) years.

In the summer of 2009, Williamson County served as the pilot for testing the new TLETS Continuity of Care Query (CCQ). Following a successful implementation in Williamson County, DSHS in cooperation with DPS and Texas Commission on Jail Standards (TCJS) conducted statewide training for local jail and Mental Health Authority (MHA) staff in the CCQ program and its utilization requirements. In addition to these trainings, DPS released an on-line training module to support certification on the CCQ system for jail personnel involved in the intake and booking process.

According to a recent report prepared by DSHS, only 62 of the 254 counties utilized the new CCQ system during FY2010. Also, some of the largest counties, Harris, Dallas, El Paso and Travis have demonstrated limited utilization of the CCQ system. Based upon these findings, it would appear that jail personnel are missing an excellent opportunity to identify persons with mental illnesses at the earliest point of their involvement in the criminal justice systems. As a result, it is likely that opportunities for diversion are being missed, which in the long run negatively impacts the county due to the higher incarceration costs associated with mentally ill offenders. Furthermore, if the CCQ is not being conducted, it is doubtful if the jails are in compliance with the provisions in SB 1557.

SB 1557 Implementation

During the 81st Legislative session, SB 1557 was enacted to strengthen the notification provisions in 16.22, Code of Criminal Procedure which requires the local sheriff to notify the magistrate of a defendant's possible mental illness or retardation within 72 hours of intake. SB 1557 directed the sheriff to notify the magistrate of defendant's possible mental health issue by either "electronic or written" means. With the CCQ results being immediately available at time of intake, notification of the magistrate is instantaneous. If DSHS is reporting that the majority of jails in Texas are not utilizing the CCQ, this statutorily mandated notification requirement is not and cannot be achieved.

The Committee finds this situation particularly troublesome due to recent TDCJ admission trends of offenders with mental illnesses. According to the most recent comparison of FY09 and FY10 cross referencing activities between TDCJ and DSHS, the number of offenders with mental illnesses incarcerated in the state's prisons systems increased by almost 2%. As the following chart reflects, the CID admissions increased and probation placements decreased during the reporting period.

July 2009					July 2010				
	C.I.D.	Parole	Probation	Total		C.I.D.	Parole	Probation	Total
Total TDCJ Population	154,990	79,195	426,923	661,108	Total TDCJ Population	154,517	81,317	423,521	659,355
# of Target Group**	12,196	5,972	19,125	37,293	# of Target Group**	14,231	6,555	17,718	38,504
% of Total Population	7.89%	7.54%	4.47%	5.64%	% of Total Population	9.20%	8.06%	4.18%	5.83%

**Schizophrenia, Bipolar, Major Depression

Attributing the increase in admissions to a specific reason, such as these aforementioned implementation delays, is not practical or possible. The Committee can however, assume that delays or failures to implement these statutory provisions have had some negative impact on the states identification and notification practices.

Interim Hearing Testimony and Discussion

Dee Wilson, Director, Reentry and Integration Division, Texas Department of Criminal Justice, testified that Texas has the best laws for identifying inmates with mental illness in the United States. She added that all state agencies are still working on full implementation of the recent legislation with the 254 county governments.

Adan Munoz, Jr., Executive Director, Texas Commission on Jail Standards (TCJS) testified that TCJS must ensure that all inmates admitted to county jails are examined for mental health issues. He added that jails are doing a good job of identifying such inmates, but that jails in smaller or more rural counties have fewer resources and may hold these inmates longer. An absence of mental health beds negativity impacts the entire state.

Mike Maples, Assistant Commissioner, Department of State Health Services (DSHS), testified that Senate Bill 839 (80R) in 2007 requires the matching of mental health records between agencies. This process allows real-time checks regarding the history of prior mental health treatment of an offender being booked into a county jail. In cooperation with the TCJS, the DSHS is providing state wide training.

Brent Stroman, Chief, Waco Police Department (WPD), representing the Texas Police Chiefs Association and the WPD provided insight into the difficulties that are created by the requirement that police transport mental health or substance abuse patients. He added additional information as follows:

- Police Offices transporting these individual to an appropriate hospital bed is stretching law enforcement resources and removing officers from the street.
- The closing of state mental health facilities has resulted in a shortage of bed space.
- He recommended funding for regional clinical facilities and community programs, creating crisis intervention teams consisting of local professional as first responders.
- Allowing cities, counties and the state to contract with private entities to transport individual to mental health facilities.

Mark Levin, Justice Director, Texas Public Policy foundation, testified that the primary solution to this problem is the diversion of mentally ill persons from the criminal justice system. He explained this further as follows:

- Development of a reentry program for persons leaving state jails.
- Creating local mental crisis centers.
- Expanding outpatient pilot programs for competency restoration.
- Establishing and providing state funding for mental health courts and other diversion courts.
- Expanding the caseload capacity for mentally ill inmates.

Joe Lovelace, Associate Director of Behavioral Health, Texas Council of Community mental Health and Mental Retardation Centers testified that

Recommendations

The Committee's review of this interim charge identified both strengths and limitations on the states response to improving the early identification of defendants with mental illnesses in local jails and the timely notification of magistrates of the defendant's mental health status. The states continued leadership role in enacting comprehensive and one of a kind policy measures continues to be its strength. The failure or delays in implementing the policy initiatives represents a significant limitation that has negatively impacted both local and state criminal justice entities. In order to ensure compliance to the laws enacted by the Texas Legislature, the Committee submits the following recommendations:

1. Require the Texas Commission on Jail Standards to submit an annual report to the Legislature on SB 839 and SB 1557 implementation activities. Due to the limited authority the state has over local jails, the only possible enforcement and monitoring tool is through the TCJS standards. Requiring TCJS to incorporate compliance standards in their routine inspection practices will partially address this situation.
2. Convene a meeting of key local and state criminal justice, mental health, regulatory and law enforcement agencies to address implementation issues. This would provide stakeholders the opportunity to discuss implementation barriers, and make recommendations towards resolving the problem areas.
3. Monitor the implementation of the magistrate notification process by adding a reporting requirement to the Office of Court Administrations (OCA) responsibilities. OCA is an excellent resource to collect and analyze information from the courts on the status of the notification requirements.
4. Legislation that authorizes transportation of mentally ill individuals to State Hospitals by means other than law enforcement resources should be considered.

Interim Charge Eight

Study and evaluate the success of juvenile probation pilot programs aimed at community-based diversion of youth from Texas Youth Commission facilities. Make recommendations for needed legislative action and additional programs to increase the number of delinquent youth successfully rehabilitated in their home communities.

Introduction

The Texas Juvenile Probation Commission (TJPC) provided in written testimony to the Senate Criminal Justice Committee and to the House Corrections Committee concise information concerning the juvenile probation pilot programs funded during the 81st Legislative Session as follows:

During the 81st Texas Legislature, TJPC received additional funding specifically to assist local juvenile probation departments in diverting youth from commitment to the Texas Youth Commission (TYC) by providing grants to enhance community-based diversion programs and services for these offenders. Rider 21 states “Out of funds appropriated in Strategy B.1.1., Community Corrections Services \$26,000,000 in General Revenue Funds in fiscal year 2010 and \$24,000,000 in General Revenue Funds in fiscal year 2011, may be expended only for the purposes of providing programs for the diversion of youth from the Youth Commission (TYC) and a juvenile justice information system at the Juvenile Probation Commission (TJPC). The programs may include, but are not limited to, residential, community-based, family and aftercare programs. The allocation of State funding for the program is not to exceed the rate of \$140 per juvenile per day. TJPC shall maintain procedures to ensure that the State is refunded all unexpended and unencumbered balances of State funds at the end of each fiscal year. Per Rider 21, if admissions to TYC during fiscal year 2010 exceed 1,783 and upon approval of the Legislative Budget Board, the Comptroller of Public Accounts shall transfer appropriations equal to \$51,100 for each commitment over 1,783 in fiscal year 2010 from JPC to TYC in fiscal year 2011

Funding received under Rider 21 is known as the Community Corrections Diversion Program (Grant C). This grant seeks to reduce the statewide number of commitments to TYC by providing departments statewide with additional resources to create or expand community-based diversion programs and services. The goal of Grant C is to reduce commitments to TYC by increasing accountability and rehabilitation of juvenile offenders through a comprehensive, coordinated, and community-based juvenile probation system. Rider 21 allows these funds to be used to provide mental health services to juvenile offenders through an interagency contract with the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI).

The allocation methodology for the Community Corrections Diversion Program is based on each juvenile probation department’s proportion of the statewide

weighted average of felony commitments to TYC from fiscal year 2006 through fiscal year 2008. Rider 21 established a maximum funding rate of \$140 per juvenile diverted per day or \$51,100 annually. This distribution formula allows all departments in the state to receive funding. Funding provided by Rider 21 is intended to maintain commitments at or below 1,783 for fiscal year 2010. If commitments exceed 1,783, TJPC is required to transfer funding to TYC at the rate of \$51,100 per youth.

- Departments that average 0-1 felony commitments were allocated \$12,500
 - ~ To enhance services or to work with other departments and pool resources; and
 - ~ To maintain their current level of commitments

- 2-4 felony commitments were allocated \$25,000
 - ~ To enhance their services or to work with other departments and pool resources; and
 - ~ To maintain current level of commitments

- 5 or more felony commitments were allocated \$51,100 per diversion to reduce commitments by the accepted number

- The number of diversions established for each department was based on the department’s proportion of the weighted TYC commitment number divided by the total number of diversions to be funded.
- 143 departments accepted this funding.
- 10 departments chose to fund mental health services through TCOOMMI.
- 25 departments initially chose not to accept this funding (6 more did accept reallocated funding).

Observed Results

**TYC Commitments Comparison by Quarter
Fiscal Year 2009 and Fiscal Year 2010**

	Fiscal Year 2009	Fiscal Year 2010	% Change
1 st Quarter	430	243	- 44%
2 nd Quarter	372	270	- 27%
3 rd Quarter	372	302	-19%
4 th Quarter	415	292*	-30%
	1,589	1,107*	-30%

*As of 9/15/2010

- In FY 2009, 113 juveniles committed to TYC (7%) had a prior commitment.
- In FY 2010 to date, 57 juveniles committed to TYC (5%) had a prior commitment.

**TYC Commitments by Type
Fiscal Year 2008 through Fiscal Year 2010**

	Fiscal Year 2008	Fiscal Year 2009	Fiscal Year 2010*
Indeterminate	1,587	1,442	1,002
Determinate	106	147	105
Total	1,693	1,589	1,107

*As of 9/15/2010

Profile of Juveniles Committed to TYC in Fiscal Year 2009

In FY 2009, juveniles committed to TYC:

- Had an average of 5 formal referrals and three adjudications to probation.
- The majority (52%) had an out of home placement prior to TYC commitment.
- The majority (53%) had a violent felony referral in their history.
- Almost half (47.5%) had a violent felony adjudication in their history.
- Twenty-six percent were committed for a violent felony.
- Only 1.6% of referrals to juvenile probation departments resulted in commitment to TYC.

**Certification as Adults Dispositions
Fiscal Year 2008 through Fiscal Year 2010**

	Fiscal Year 2008	Fiscal Year 2009	Fiscal Year 2010*
Certified as Adult	245	225	225

*As of 9/15/2010

**Referrals by Type
Fiscal Year 2008 through Fiscal Year 2010**

	Fiscal Year 2008	Fiscal Year 2009	Fiscal Year 2010*	% Change FY 09-10
Felony Referrals	22,078	20,350	18,124	-11%
Non-Felony	77,695	77,368	70,220	-9%

Referrals

Total	99,773	97,718	88,344*	-9.6%
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*As of 9/15/2010

Texas Youth Commission Funding

The Texas Youth Commission was funded for a maximum institutional population of 1900 youth in fiscal year 2010 and 1800 youth in Fiscal year 2011. On October 6, 2010 their 8 facilities held a total of 1511 youth. The fiscal year 2010 budgets for each facility and a total for the 8 facilities, along with TYC Central Office is as follows:

Units / Institutional Facilities	FY 2010	FY 2010	Variance
	Budgeted	Est. Expended	
Al Price State JCF	14,883,353	14,786,246	97,106
Corsicana Treatment Center	16,236,295	15,523,528	712,767
Crockett State School	17,315,704	16,194,176	1,121,528
Evins Regional Juvenile Center	14,702,245	14,415,495	286,750
Gainesville State School	18,533,057	18,211,712	321,345
Giddings State School	21,981,378	21,999,846	(18,467)
McLennan County I	17,357,978	16,334,967	1,023,012
McLennan County II	17,048,590	16,482,717	565,873
Ron Jackson Unit I	18,343,922	16,510,617	1,833,304
Ron Jackson Unit II	6,207,440	5,714,026	493,414
**Victory Field - Vernon	7,888,558	5,908,113	1,980,445
**West Texas State School	3,450,694	2,977,983	472,711
Total	173,949,214	165,059,427	8,889,787

Central Office	20,703,218	19,422,294	1,280,924
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****Note:** Victory Field and West Texas State School were closed prior to the start of fiscal year 2011, as the 81st Legislature denied funds for them to operate in fiscal year 2011.

Diversion Programs Discussion and Testimony

Chairman Whitmire gavelled the hearing to order and proceeded to call the first of the invited witnesses.

Invited Testimony

Vicki Spriggs, Executive Director, Texas Juvenile Probation Commission (TJPC), provided that funding for the Community Corrections Diversion Program (Grant C) were appropriated under Rider 21 during the 81st Legislative Session. The funds are designed to divert youth from TYC commitment and to provide for treatment and supervision in their home communities. She provided comments on her written testimony as follows:

- The announced 5% budget reduction for 2011 and the potential 10% budget reduction for the next biennium are a major concern to Juvenile Probation Departments, who are also facing local funding issues.
- TJPC has requested exemption from these reductions which have the potential to increase the number of TYC commitments.
- TJPC and local Juvenile Probation Departments should be allowed shift their focus from tracking the various funds that are appropriate through TJPC to tracking outcomes derived by Juvenile Probation Department programs.

Dee Wilson, Executive Director, Reentry and Integration division of the Texas Department of Criminal Justice (TDCJ), stated that recommendation will be presented on how to model the juvenile diversions programs based on successful adult programs in the near future. She added that a need to work with the youth family, address mental health concerns and provide wrap around service for the youth.

Estela Medina, Chief Juvenile Probation Officer, Travis County Juvenile Probation Department (TCJPD) and President, Juvenile Justice Association of Texas (JJAT) provided insight on the implementation of these programs. She also added as follows:

- That Juvenile Probation Departments (JPD) are working within their local communities with serious and difficult juveniles and are obtaining positive results and lowering TYC commitments.
- That an exemption from the 5% cuts for TJPC will allow these positive results to continue as TJPC funds flow to the local JPD.
- That flexibility in the use of state funds is necessary because of the diversity of counties and their populations, and each JPD needs to design programs that fit their population.

Tom Brooks, Executive Director, Harris County JPD, stated that in Harris County commitments to TYC continue to decrease from previous years. He added that much of the credit goes to juvenile district court judges who are willing to divert juveniles when community programs are available. He went on to add:

- That in 2009 in Harris County there were 1,729 youth eligible for commitment to TYC but that only 216 were committed.
- An early concern that more youth would be certified as adults, due to the lowering of the TYC age to 19 years old, has not occurred.

John Perry, Chief Juvenile Probation Officer, Hopkins County JPD, and Vice-President JJAT, provided that historically commitment to TYC decrease when there has been significant funding for juvenile probation. He continued as follows:

- State funding should be as flexible as possible because the state is so diverse and that counties need to implement programs specific to their needs.
- Today's juvenile offenders have more problems than those observed in the recent past.
- That a reduction in funds available for diversion programs will have a negative impact and could lead to increased commitments to TYC.

Tommy Ramirez, Chief Juvenile Probation Officer, Cameron County JPD, and representing the South Texas Chief's Association, stated that Grant C funds have allowed his county to drastically reduce the number of commitments to TYC. He added as follows:

- That these funds are very important to provide good alternatives to TYC.
- Local JPD are also facing funding cuts from their counties, which make up approximately 70% of their funding, with state funds around 30%.
- That proposed cuts in state funding will have sever affect on the diversion programs operations.
- His department has used these funds to develop an academic and treatment setting for targeted children that also provides vocational training and job skills.

Desiree Kilcrease-Fleming, Interim Assistant Chief Juvenile Probation Officer, Dallas County JPD, testified that the Grant C funds allowed the county to provide quality services to youths and their families, resulting in a 62% reduction in the number of children committed to TYC. They have implemented residential programs for juvenile sex offenders and drug abuse programs, which are dependent on these funds not being cut.

Jane King, Chief Juvenile Probation Officer, Randall County JPD, testified that they already have significant community services and have been diverting children from TYC. The Grant C funds assisted in the elimination of the fiscal excuse for committing children to TYC (transferring cost to state). She went on to recommend that true performance measures be utilized in establishing accountability.

James Martin, Chief Juvenile Probation Officer, Jefferson County JPD, provided that these funds have allowed his county to reduce TYC commitments through the use of residential facilities for sex offenders, drug offenses and females. He recommended not only maintaining the funding but to increase funding.

Public Testimony

Jeanne Meurer, Senior Judge, Travis County, provided information on Travis County actions to reduce commitments to TYC and their use of the new funding stream. She provided details as follows:

- The implementation of a new crossover program for children in the foster care system who are in the juvenile justice program.
- The funding is essential to keeping and rehabilitation of children in the community.
- She recommended streamlining accountability and focusing on goals and reducing recidivism, also with developing a better definition of recidivism.

Jodie Smith, Public Policy Director, Texan Care for Children, stated that relationships between local mental health and mental retardation services and the JPD affect decisions regarding if these funds will be used for mental health services. She added as follows:

- That 110 of 114 of the JPD are using some of their funding for residential services.
- That a question exists if these programs are using evidence based practices and if not, only those that do should be utilized.

Mark Williams, Chief Juvenile Probation Officer, Coke, Concho, Irion, Runnels, Schleicher, Sterling and Tom Green Counties provided information concerning the need of small JPD to have flexibility regarding the use of these monies to obtain services specific to a child's needs.

Recommendations

Extensive documentation and testimony was presented that revealed the effectiveness and efficiency derived from moving juvenile services away from state run juvenile prisons to community programs. Keeping a child in the community not only cost less but the creation of innovative programs provides improved services without a negative impact on public safety. On October 11, 2010 a New York editorial titled "Two Words: Wasteful and Ineffective" concerning the New York Juvenile Justice System. It recommends a process that Texas has already developed with the juvenile probation pilot programs aimed at community-based diversion of youth from Texas Youth Commission facilities.

California has already embraced this direction and is in its second year of shuttering their juvenile prisons and moving funding and authority to county juvenile probation programs. Texas needs only to continue to move resources to the front end of the juvenile justice system while providing secure setting for only the worst of the worst. This committee recommends that:

1. Continue the momentum by enhancing the juvenile probation pilot programs aimed at community-based diversion of youth from TYC, expanding these programs to all JPD in Texas.
2. Continue to downsize TYC and its central office to the appropriate level required for their reduced population.
3. Revisit the last session's sunset recommendation to consolidate all Juvenile Justice Agencies into a new Department of Juvenile Justice and reduce the apparent redundancies in the current organization structure. Emphasize the use of community programs to provide treatment and rehabilitation of youth in their communities.

Interim Charge Nine

Consider the impact that secondary education school disciplinary laws and policies have on the juvenile justice system and the adult prison system. Recommend changes, if needed, to current law.

Introduction

The impact of school disciplinary laws and policies on the criminal justice system has become an important issue for study. In 1995 the Safe Schools Act (Chapter 37, Subchapter A of the Texas Education Code; also referred to as zero tolerance policy) was adopted with regard to criminal activity and misconduct in school. Chapter 37 of the Education Code states that a code of conduct must be established by every public school district. Within every code are the circumstances by which a student may be removed from class, campus, or disciplinary alternative education programs. Chapter 37 also allows for a teacher to remove a "dangerous or disruptive" student from their class, while limiting the ability of the administrators to return the student to the class. If a student is permanently removed they may be assigned to another class or placed in a disciplinary alternative education program (DAEP) or juvenile justice alternative education program (JJAEP).

The current structure of school disciplinary system starts with an in-school suspension. In school suspensions can range from a couple of hours to a number of days. There is no statutory limit for this type of disciplinary. The next step is out-of-school suspension. Statute governs that out-of-school suspensions can only last for a certain number of days; however, there is no limit to how many can be given. Another sanction is a referral to a DAEP, which is mandated by law for every school district. The most severe option is expulsion, which may be one of two options. Counties with a population of over 125,000 may expel juveniles to a JJAEP, which are operated by the county juvenile probation system. Smaller counties may expel juveniles to a DAEP or "to the streets". In addition to removal from class or campus, juveniles may also be ticketed or arrested on school campuses. The last two options guarantee involvement with the justice system. Suspensions and expulsions do not guarantee involvement with the justice system. However, expulsion to a JJAEP does guarantee introduction to the juvenile justice system.

According to the Texas Education Agency (TEA) website there were 776,241 out of 4,892,748 students were disciplined using some form of the system in the 2008-2009 school year. This was a slight decrease from the previous two years.

Discussion and Testimony

The Senate Criminal Justice Committee conducted a public hearing on interim charge 9 on April 29, 2010. Chairman Whitmire provided opening remarks that indicated the complexity of this issue.

Invited testimony

Deborah Fowler, Legal Director of Texas Appleseed (TA), and Ronald Lewis, board member of TA, provided testimony based on the written reports provided by TA. The focus of the reports is the concept of a "school-to-prison pipeline". The pipeline refers to the link between school disciplinary, dropout rates, and incarceration. According to Fowler and TA, a history of school disciplinary action is the greatest indicator of future incarceration. More accurately explained, there is a correlation between disciplinary action and incarceration rates.

One of the major concerns expressed during Fowler's testimony was the large number of discretionary referrals to DAEPs. Mandatory referrals are determined by statute, and were developed in order to provide uniformity in the discipline of children. The current data demonstrates that discretionary referrals are utilized on an approximate ratios of 2 to 1. The data shows a slight decrease from previous years, however the numbers are still high.

Another concern regarding discretionary referrals to DAEPs and JJAEPs is a large number of them are for noncriminal and nonviolent issues. The same is true for the offenses that are ticketed. The concern is juveniles are being removed from traditional schooling for matters that are noncriminal and nonviolent. An example of a frequently ticketed offense is disorderly conduct. Serious or persistent misbehavior is the offense used to refer juveniles as a child in need of supervision (CHINS). Many of these lesser offenses are not defined in the code of education; therefore, the interpretations of what constitutes the offense differs from district to district. These are conduct violations that may potentially be handled in a less disruptive manor.

In the report published by TA there are eight key findings:

- **Where a child attends school and not the nature of the offense is the greater determining factor in whether a student is expelled for discretionary reasons.**
 - A review of the data found that *the number of student expulsions does not correlate with the size of the district*. Some smaller districts (Aldine, North East, Waco, Klein, Brownsville and Killeen ISDs) top the list of Texas' highest expelling school districts, while some of the largest districts (Austin ISD) strictly limit the capacity of JJAEP programs and, correspondingly, the numbers of students it will discretionarily expel. In any given year, many Texas school districts do not expel any students.
 - Differences in the capacity and the per student cost (ranging from about \$70 to more than \$200 per day) to school districts to expel students to a JJAEP may contribute to varying rates of discretionary expulsions and average length of stay in a JJAEP among school districts statewide.
- **African American students—and in some districts Hispanic students—are significantly overrepresented in discretionary expulsions from a DAEP for “serious or persistent misbehavior” or more minor, non-criminal Student Code of Conduct violations.**

- African American students are overrepresented in all categories of discretionary expulsions—but *the greatest disparity (more than double their representation in the total student population) exists in their expulsions for discretionary, non-violent offenses that tend to be more subjective in nature*, such as “serious or persistent misbehavior” in a DAEP.
- African American students in several districts are anywhere from two to 54 times more likely than a student of another race or ethnicity to be expelled from a DAEP for “serious or persistent misbehavior.”
- Nearly half of Texas’ student population is Hispanic, and more Hispanic students are expelled than any other racial or ethnic group.
- **Special education students are overrepresented in all categories of expulsions, reflecting systemic problems with school districts’ assessment, programming and accountability for implementation of special education students’ Individualized Education Plans (IEPs) and Behavioral Improvement Plans (BIPs). These problems are particularly acute in DAEPs.**
 - Special education students made up only 10 percent of the student body statewide in 2008-09, but *accounted for 21 percent of all expulsions in Texas*.
 - Research shows that the consequences of expulsion are more significant for special education students: removing them from their regular classroom can increase negative behaviors and interrupt academic gains.
 - African American special education students are over three times more likely to be expelled than other students, and Hispanic special education students are two-and-a-half times more likely to be expelled.
- **In Texas, the majority of students are expelled at the discretion of school districts, and not for offenses so serious as to mandate their expulsion from school.**
 - During 2008-09, *discretionary expulsions* made up 71 percent of all expulsions statewide, and 62 percent of all expulsions to a Juvenile Justice Alternative Education Program (JJAEP).
 - During the same school year, expulsions for *“serious or persistent misbehavior” while in a Disciplinary Alternative Education Program (DAEP)* made up 50 percent of all discretionary expulsions, and more than 34 percent of all expulsions statewide. This behavior would not be an expellable offense in any other educational setting.
 - Students in districts with a JJAEP are far more likely to be expelled from a DAEP for “serious or persistent misbehavior” than students in districts without a JJAEP. During 2008-09, “serious or persistent” expulsions accounted for 22 percent of discretionary expulsions “to the street,” but triggered 55 percent of discretionary expulsions to a JJAEP.
 - *Surveyed JJAEP administrators recommended eliminating discretionary student expulsions to JJAEPs—particularly for “serious or persistent misbehavior”*—citing the difficulty of addressing the needs of these students alongside those who have been expelled for committing serious criminal offenses. Data shows that JJAEPs are less successful with students expelled

for “serious or persistent misbehavior,” suggesting expelling these students may make their behavior worse.

- **Prosecution of “serious or persistent misbehavior” in a Disciplinary Alternative Education Program (DAEP) as a CINS offense (Conduct in Need of Supervision) is *not consistent* across counties—yet such prosecution uniformly brings young people into the juvenile justice system for *non-criminal behavior*.**
 - Of the 27 counties that are required to have a JJAEP, 20 appear to prosecute “serious or persistent misbehavior” in a DAEP as a CINS offense.
 - In 2007, close to 1,800 youth were prosecuted for the CINS offense of being expelled from a DAEP for “serious or persistent misbehavior.” While this represents a fraction of the youth that local juvenile probation departments supervise, this type of CINS prosecution is an obvious and easily avoided example of the criminalization of low-level student misbehavior.
 - The lack of a statutory definition for “serious or persistent misbehavior” means that youth are being charged with an offense that does not have a recognized meaning within the Family Code.
- **Programmatic failures in Disciplinary Alternative Education Programs (DAEPs)— and the state’s failure to require the Texas Education Agency (TEA) to monitor and enforce meaningful standards—likely contribute to the large number of students expelled from DAEPs for “serious or persistent misbehavior.”**
 - Responding to concerns about the quality of DAEP curriculum and accountability, the Texas Legislature mandated the TEA in 2007 to adopt the first standards for DAEPs—but did not require the agency to monitor or enforce them.
 - Though DAEPs are required to include programming meant to address students’ behavioral issues, some DAEPs only address behavior through dress code requirements and other rules, while others require students to attend drug and alcohol counseling (even when those behaviors are not the reason for their referral to the DAEP). DAEPs have *twice the dropout rate* of mainstream schools—and in 2008-09 alone, the *recidivism rate approached 30 percent*.
- **Many JJAEP programs use models that are not considered “best practices,” though the Texas Juvenile Probation Commission makes information regarding effective JJAEP program models widely available.**
 - Although the “therapeutic” JJAEP model has proven most effective in improving both academics and behavior of students expelled to these facilities, only 15 percent of JJAEPs employ this model.
 - The majority of JJAEPs in Texas model their programming after traditional schools or “boot camps”—though research shows these models are not as successful as the “therapeutic” approach in achieving more lasting academic and behavioral gains.
- **Despite repeated studies identifying the need for more school-based mental health and counseling services, Texas has failed to meaningfully address this issue.**

- In 2008, only 18 percent of Texas children eligible to receive public mental health services actually received them.
- According to a Texas Education Agency study, only about a fourth of Texas public schools employ a licensed mental health professional. TEA reported that most schools rely on school counselors to identify and address students' mental health and substance abuse problems, yet the majority of counselors' work time is spent on other tasks.
- In Texas, 33 percent of youth referred to juvenile probation have a diagnosed mental illness, and 60 percent of young people incarcerated in the Texas Youth Commission need mental health treatment.
- Nationally, 50 percent of students with a mental illness age 14 and older drop out of high school—and 73 percent of those who drop out are arrested within five years.

TA also had nine recommendations for policy changes on the state level based off of their data.

- **Encourage school districts to develop school-wide Positive Behavioral Support (PBS) programs.** School-wide PBS is an evidence-based program that has been proven to reduce disciplinary referrals and improve academics.
- **Amend the Texas Education Code so that school districts do not have the discretion to expel a student for “serious or persistent misbehavior” in a DAEP.** Juvenile Justice Alternative Education Programs (JJAEPs) were created to serve students who committed criminal offenses at school—and are not an appropriate setting for students with low-level behavioral problems.
- **Amend the Texas Family Code to eliminate “serious or persistent misbehavior” while in a DAEP as a CINS (Conduct in Need of Supervision) offense.** This CINS offense is the most obvious example of the criminalization of low-level student misbehavior.
- **Provide state oversight of DAEPs.** Because the majority of all discretionary expulsions to JJAEPs or “to the street” are for students’ “serious and persistent misbehavior” in a DAEP, it becomes all the more critical that the Texas Education Code be amended to mandate that the Texas Education Agency (TEA) monitor and enforce *meaningful* standards for DAEPs. Otherwise, the DAEP standards—which the TEA was required to adopt after the 2009 legislative session—will only amount to mere “ suggestions” or “guidelines.”
- **Require TEA to notify districts when they disproportionately discipline minority and special education students—in suspensions, in referrals to DAEPs, and in expulsions.** TEA collects a great deal of data from school districts—and Texas does a far better job than many states of collecting data related to disciplinary incidents. Unfortunately, TEA does not share this data with school districts so they can take action to reduce a disproportionately large number of disciplinary referrals of minority and special education students.
- **Require districts with disproportionate disciplinary referrals of minority and special education students to develop a plan to address overrepresentation.** This plan should include implementation of school-wide positive behavioral supports.

- **Provide technical assistance to schools looking to expand school-based mental health services, and increase funding for services if needed.** School-based mental health services are critical to resolving behavior problems early and ensuring academic success for many students.
- **Create a discretionary grant program for DAEPs interested in developing evidence-based behavioral programming.** School districts state that they were given an “unfunded mandate” when they were required to create DAEP programs in 1995. Putting money into the creation of quality programs will reduce costs to districts and communities in the long-term by addressing serious behavioral problems early.
- **Create a discretionary grant program for JJAEPs interested in developing evidence-based programming.** While therapeutic JJAEP programs have been proven most effective at addressing students’ behavioral and academic needs, they are the most expensive programs to run. Creating a discretionary grant program would allow districts to modify existing JJAEP programs and recognize longer-term savings by reducing the number of students who re-offend. This will not only reduce the number of students who cycle back through the JJAEP, but could also keep many students from reaching the next tier of the juvenile justice system.

Ken Knippel, Assistant Superintendent of Administration for Aldine Independent School District (AISD) and Dr. Archie Blanson, Deputy Superintendent of AISD, testified next. Representatives from AISD were invited because AISD has the highest number of discretionary expulsions in the state. Mr. Knippel explained that part of the explanation for the high numbers were the districts discretionary referrals to their one-day drug or alcohol program. Juveniles who are found in possession or under the influence are expelled to these programs and then returned to normal school. They are however still classified as discretionary expulsions. Knippel also explained that AISD did not use discretionary expulsions to send juveniles to JJAEPs, only mandatory expulsions. Knippel also acknowledged that there is an over representation of minorities and special education students in disciplinary process. However, the district is currently working on solutions to the problem.

Knippel also provided testimony regarding the ticking issue. He stated that ticketing for class c misdemeanors has declined over the past five years. He testified that at this time no student under ten is being ticketed. He also stated that the majority of tickets were issued for fighting, not for truancy. Knippel testified that an attendance officer handles the truancy issues, not the uniformed officer. Knippel reported that the attendance officer files complaints with the court on students who have misses a certain number of days, but only after attempting to meet with the student and parents. Statue does mandate that after a certain number of days truancy must be reported.

David Anderson, General Counsel for Texas Education Agency (TEA) stated that approximate 20 percent of students received disciplinary actions during the 2008-2009 school year. The majority of these were suspensions. Anderson also stated that less than 2

percent of student were removed to DAEPs. An even smaller, 0.16 were expelled. All of these numbers were lower than previous years.

While there are many concerns regarding removal from school, one of the major concerns is what education is provided at the DAEPs and the JJAEPs. Anderson responded to these concerns by stating that school districts are responsible for the DAEPs as well as the JJAEPs. Both types of facilities are required to teach the foundation curriculum of the district.

Public testimony

Kathy Grant, representing herself provided the first public testimony. The focus of Grants testimony was to provide due process when consider removal of special needs youth.

Jodie Smith, public policy director for Texans Care for Children (TCFC), states that each district has its own disciplinary environment. The example provided is disruption of a class room. The meaning and the punishment can vary from district to district. In one district it may include chewing gum, while in another it does not. Some district allow the teachers to handle these issues while others issue criminal ticket or expel the student. The concern is lack of consistency across the state, which is hard to evaluate because access to comparable data on disciplinary between district is limited.

Smith testified that the position of TCFC was to support Positive Behavioral Interventions and Support (PBIS). PBIS is an evidence based framework utilized to reduce disciplinary incidents, improve academic outcomes, and increase the sense of safety on campuses. It is also recommended for addressing some of the concerns about how youth with disabilities are handled. The main goal is to reestablish the difference between criminal behavior and behavioral issues.

Smith provided five recommendation to the committee:

Texans Care recommends that the 82nd Legislature:

- Require school districts to implement school-wide Positive Behavioral Supports.
- Require TEA to share data with school districts that allow them to compare their disciplinary referral data against other school districts.
- Require school districts that disproportionately refer students of color or special education students to develop a remediation plan.
- Eliminate “serious and persistent misbehavior” in a DAEP as grounds for discretionary expulsion and for referral to juvenile court as a Child in Need of Supervision (CINS) offense.
- Support keeping children in the community by making Mobile Crisis Teams available on school campuses.

Dr. Richard Watkins, Chairman of the criminal justice committee of the Texas State Conference of the NAACP, testified that from April, 2005 to April, 2010 Huntsville ISD had issued a total of 8,318 citations. 1,398 of the citations have been for disruption of class. It was also stated that this is currently a violation law to issue a citation for a violation of the school code of conduct. A requirement of the issuance of a citation is the appearance of the youth and parents in municipal court. The consequences are fines in addition to disciplinary action. Dr. Watkins also stated that 791 student had been removed from school to detention centers at a cost of \$661,000 to the county, of which most is recovered from parents.

Watkins also states that youth are being exposed to the justice system by being housed in adult jails while awaiting placement at juvenile facilities.

He provided the following recommendations were to:

- Have TEA reorganize to reflect the use of proven educational methods designed to be result oriented.
- Development of guidelines that encourage school board members and law enforcements involvement in the day-to day operations of the school district.
- Elimination of the current standardized test.
- Sensitivity training for teachers

Ana Yanez-Correa, executive director, Texas Criminal Justice Coalition, provided support for the recommendations of TA and TCFC. She also stated that it is damaging to the youth to refer them to DAEPs. She recommended that better mechanisms be established for obtaining information from school districts. She also recommended removing disruption of a classroom or transportation from the list of citation violations. She expressed that there is currently no way to track the amount of money generated by citations. The recommendation would be to track the money and allocate a portion to prevention programs.

Adrian Moore, executive director, Council on At-Risk Youth, testified in support of utilizing more evidence based drug, delinquency, and violence prevention programs, especially for high risk youth. He suggests that TEA update their education code to include services and programs for students involved in any disciplinary action. He also recommended that TEA allocate 15 percent of the dropout funding in Article III of their budget to fund evidence based prevention programs for disciplinary students. According to Moore 50,000 students would be assisted by the allocation.

John Grey, representing the Texas State Teachers Association, testified that the current system is not the issue. The combination of state guidelines and local control would work if school administrators were better properly trained in the use of discipline in the educational setting.

Jeff Miller, policy specialist, Advocacy Incorporated, testified in agreement of the statements and recommendations made by TA with regard to students with disabilities. Miller stated that while ten percent of students receive special education, they represent twenty-one percent of the students expelled in Texas. He stated that this overrepresentation was the result of systemic problems with assessment done by school districts, programming and accountability for implementation of special education students' Individualized Education Plans and Behavioral Improvement Plans. He also stated DAEPs are especially lacking in these areas.

Miller also testified to the topic of citation. He explained that often students with disabilities are disciplined and also cited; meaning they are directly involved with the justice system. Instead of criminalizing these students and removing them from schools for issues that are directly related to their disability, steps should be taken to develop plans to address the behavioral issues when they are not violent or criminal. The first step in accomplishing this is supplying teachers with needed help, and identifying students with special needs.

He also testified that there are issues regarding the availability of disciplinary statistics being assessable to parents and school boards. He suggested that this information be posted on school districts' websites.

Based on our experiences, Advocacy, Inc. offers the following recommendations:

- Enforce current laws, including Individuals with Disabilities Education Act (IDEA), Child Find obligation;
- Encourage school districts to develop school-wide PBIS. School-wide PBIS is an evidence-based program that has been proven to reduce disciplinary referrals and improve academics;
- Amend the Texas Education Code so that school districts do not have the discretion to expel students for "serious or persistent misbehavior" in a DAEP;
- Provide state oversight of DAEPs, including requiring the TEA to monitor and enforce meaningful standards for DAEPs;
- Require TEA to notify districts when they disproportionately discipline (suspend, refer to DAEPs and expel) special education and minority students and require districts with disproportionate disciplinary referrals of minority and special education students to develop plans to address overrepresentation;
- Provide incentives for schools to expand school-based mental health services, including funding;

- Ensure good transition planning when students return to their home campuses after being disciplined or expelled; and
- Improve the availability of accurate information on reporting of disciplinary removal data, including information specific to students receiving special education services.

Rose Cruz, representing herself, testified that local control is not working with regard to school disciplinary issues. She stated that the state should be able to intervene when local control is failing. She recommended that schools cease using citations as disciplinary option for behavioral adjustment.

Eric Hartman, director of government relations, American Federation of Teachers (AFT), provided a brief overview of the education code. He testified in support of the current structure and recommended requiring smaller counties to establish DAEPs in order to prevent students from being expelled to the streets. Hartman was not in support of the term "school to prison pipeline". He testified that it implied that disciplinary action in schools irrefutably leads to juvenile incarceration. According to Hartman ninety-eight percent of students placed in DAEPs and JJAEPs do not end up in prison. He testified that it is more accurate to state that disciplinary action is an indicator of issues that may lead to future incarceration. The goal is to provide intervention before the youth becomes incarcerated, but to also provide safety and a productive environments for those not demonstrating behavioral issues.

Hartman testified that AFT recognizes there are issues with disproportionate numbers of student subgroups being referred to DAEPs or JJAEPs in certain districts. They do not support applying a cap on referrals. They do support enhanced monitoring by TEA and better enforcement of quality standards for DAEPs and JJAEPs. Though they do not support eliminating referrals to JJAEPs from DAEPs for "serious or persistent misbehavior", they do support adding some parameters to the definition. They are also in support of more early interventions for classroom issues. Maintaining adequate staff and better administrative support are important tools needed to better manage the classroom and address misbehavior before it escalates to removal. AFT recommends better training regarding the Safe Schools Act to ensure that retaliation on teachers does not occur, mandatory expulsions are honored, removed students are not returned without utilizing the proper procedure, and proper notification regarding violent students is achieved.

Deacon Doots Defour, Criminal Justice Ministries, Roman Catholic Diocese of Austin, spoke to the truancy issue. He recommended increasing the training for teachers and administrators, returning social workers or counselors to schools to address family issues, and to add mentoring programs across the state.

Matt Simpson, policy strategist, American Civil Liberties Union, also spoke to the truancy issue. He stated that making 18-21 year old subject to truancy laws was actually a disincentive for them to enroll in school. He also testified that though the truancy prosecution increase by approximately 10,000 for the last two years there has been no

decrease in the states dropout rates. In addition he stated that schools are required by law to report student for truancy after ten absences. In some cases there are steps that can be taken to address the issue that does not require prosecution. He recommended modifying the truancy law by excluding 18 to 21 year olds, and making the reporting of truancy more discretionary for schools.

Elyshia Aseltine, representing herself, testified regarding her dissertation on school ticketing. She testified that in 1994 only 1.5 percent of tickets were issued by school police officers. In 2007 40 percent of the ticket for juveniles were issues by school police officers. She stated that the majority of tickets were for curfew violations, typically for leaving campus during lunch. The next most frequent ticket is for disorderly conduct, and next abuse of language. Many citation are also given for drug paraphernalia and disruptive behavior. She also provided statistics pertaining to the number of juveniles who experienced increased penalties for citation as a result of school disciplinary. Approximately 14,200 ticket were issued over a fourteen year period issues; 2,119 resulted in a warrant being issued or the juvenile serving jail time.

Jeff Ward, president, Texas Association of School District Police, testified that revenue for citations was not a factor in issuing citations. He stated that only five dollars for every citation is returned to the district from the county in adjudicated cases. He stated that school police officers report to the police department or the superintendent of a school district; and that school administrators can not require that police issue a ticket. They can be the complaining witness if involved in the incident. He also stated there has been a reduction in the issuance of tickets. He also states that as a result of a change in law, possession of a knife on campuses is no longer a criminal offense therefore is no longer a citable offense. He also stated that officers are trained in crisis intervention and many have mental health training.

Marc Levin, representing the Texas Public Policy Foundation, testified that the information pertaining to children in DAEPs was insufficient in regards to which individuals end up in the juvenile and adult justice system. He also stated that many of the issues affecting students can and should be addressed in school with the utilization of evidence based disciplinary, prevention, and conflict resolution strategies. He also recommended modifying the definition of "serious and persistent behavior" to narrow the definition. His written testimony is provided in full below and outlines many alternatives to referrals for students.

First, schools are a major source of referrals to juvenile probation. Dallas County Juvenile Probation Chief Mike Griffiths notes that many simple schoolyard scuffles that were once resolved in school through disciplinary action now result in referrals to probation. In 2007, we assisted lawmakers in developing House Bill 278, which eliminated a provision in the Education Code authorizing school districts to create criminal offenses not in state law for violations of school policies. However, there are overly broad offenses in the Education Code, such as "disruption of classes," which includes "emitting noise of an intensity that prevents or hinders classroom instruction." Disrupting class is one of the most

common offenses for which students are cited. This offense and, perhaps others as well in the Education Code, should be narrowed to better distinguish between behavior that should simply be a disciplinary matter and that which is truly worthy of being criminalized.

Also, the thousands of students receiving tickets for Class C misdemeanors in school for offenses such as disrupting class are referred by municipal and justice of the peace courts to probation on contempt of a court order if they do not pay their fine and perform community service. David Reilly, the chief juvenile probation officer for Bexar County, says that, after investigating these cases, they often found that the youth fulfilled his obligations and had no subsequent trouble.²⁹ In the fall of 2008, this probation department notified the justice of the peace courts that they would “work” only those cases in which truancy was the underlying offense. The department said in remaining cases it would send a written notice to the family advising them of a referral and direct them to other agencies, but would take no further action unless the child was referred again.³⁰ This approach allows the Bexar County Juvenile Probation Department to focus its limited resources on youths on probation for offenses that have the greatest impact on public safety.

School disciplinary action is often a precursor to involvement in the juvenile justice system. Some 67 percent of youths referred to the juvenile justice system in Texas had at least one school disciplinary contact in the prior year.³¹ A Texas A&M University study found that, holding all other risk factors constant, Texas students involved in one or more disciplinary incidents were 23.4 percent more likely to be referred to the juvenile justice system than those with no school disciplinary contact.³² A student who has been suspended is three times more likely to drop out and 80 percent of adult prison inmates dropped out of school.³³

Research has indicated that out-of-school suspension actually accelerates delinquency, as these students often lack proper parental supervision, particularly when there is only one parent who is working, and frequently wind up getting into trouble on the street.³⁴ Also, studies have found that suspended students’ behavior and academic performance do not improve upon returning to school.³⁵ Suspension can be particularly ineffective in addressing behavior problems associated with a learning disability. While 11 percent of Texas students are classified as special education, these students account for 23 percent of those in out-of-school suspension.³⁶ Though school safety must always remain paramount, out-of-school suspensions are typically based on noncriminal misbehavior, and schools have a range of other options such as in-school suspension, after-school detention, and school service projects.

Additionally, schools should use existing resources to implement evidence-based disciplinary, prevention, and conflict resolution strategies that reduce delinquency and keep more kids in school. An example of prevention is character education, an approach that emphasizes the distinction between right and wrong and

development of positive values. As it is often incorporated within existing curricula, the cost and instructional time involved may be relatively minimal. Although 83 percent of the districts and charters that responded to the annual Texas Education Agency (TEA) character education survey said they have a program, only 35 percent of districts and charters responded to the survey.³⁷ Though TEA does not have specific data, the agency suspects that the vast majority of the remaining districts and charters do not use character education.³⁸ Some 62.4 percent of responding districts with a program said that they believe it reduces disciplinary referrals, which are often precursors to out-of-school suspensions and juvenile justice referrals.³⁹ The Character Counts! program has been found to significantly reduce violent crime, property crimes, drug offenses, and truancy.⁴⁰

Additionally, conflict resolution programs such as peer mediation⁴¹ and school-based teen courts⁴² may offer viable alternatives to some of the more than 600,000 annual out-of-school suspensions⁴³ and thousands of school referrals to the juvenile justice system while still holding students accountable and promoting school safety. Research also supports the effectiveness of behavior contracts signed by the student, parent, and a school official.⁴⁴ Evidence-based bullying prevention programs are another school-based solution. They have been found to reduce bullying by up to 50 percent, which in turn reduces crime.⁴⁵ Nearly 60 percent of boys who researchers classified as bullies in grades six through nine were convicted of at least one crime by the age of 24, and 40 percent were convicted of three or more crimes by this age.⁴⁶ Also, bullied students are more likely to be absent from school and suffer from depression.⁴⁷

Reducing truancy can also reduce dropouts and future involvement in the juvenile and adult criminal justice systems. Fort Bend County has implemented a truancy abatement program called Saved by the Bell. A truancy officer is based at each of the three schools with the highest rates of truancy. The officers check to see the student is present. They go to the home if there is an unexcused absence. They also address special circumstances that are contributing to truancy. They have, for instance, purchased clothes for a student who did not come to school because he had none. The average age of students in the program is 16. Youths typically participate for six months. Saved by the Bell has reduced the number of disciplinary referrals by 89 percent compared to the prior year when participating youths were not in the program.⁴⁸ From a school budgeting perspective, cost-effective initiatives that result in more students staying in school can more than pay for themselves, since state school funding is primarily based on student attendance.

Additionally, lawmakers should examine the impact of the 1995 repeal of a statute that prohibited out-of-school suspension for truancy or tardiness, since kicking kids out of school does not solve the problem of them not being in school.

Finally, policymakers must continue to take steps to enhance accountability and performance at Disciplinary Alternative Education Programs (DAEPs), which serve about 100,000 Texas students at any given time. When DAEPs were created, most students referred were for disciplinary violations for which the Education Code mandates suspension, but today more than three-quarters of referrals are discretionary. The vast majority of students suspended to a DAEP committed disciplinary violations, not a criminal offense, although a small percentage of DAEP students are referred for an offense—sometimes a serious one—committed more than 300 feet from the school campus. Serious offenses committed on campus result in expulsion. Expelled students are sent to Juvenile Justice Alternative Education Programs (JJAEPs) in populous counties and, in counties without JJAEPs, expelled to the street.

DAEPs have a drop-out rate that is more than five times higher than regular campuses.⁴⁹ In 2007, legislation required an intake and outtake exam to determine whether students placed at a DAEP for 90 days or more advanced academically, but the TEA is still developing rules to implement this provision nearly three years later.

Anecdotally, reports from around the state suggest that much of the per-student funding that districts receive does not make its way to DAEPs. Policymakers should study this issue to identify whether a greater share of funds that should be spent to remediate the academic and behavior challenges of students at DAEPs are instead going to district-level administration or other campuses. It is the allocation of existing funds that should be the focus, given that DAEP students are disproportionately disadvantaged which means that weighted student funding is actually greater, but the question is how much of this money actually goes towards instruction and programming at DAEPs.

Another issue that demands scrutiny is the expulsion of students from DAEPs, especially special education students, for serious and persistent misbehavior. The Legislature has not defined this nebulous concept and, as a result, such expulsions occur even though these students at DAEPs have not committed an offense and their behavior may be a manifestation of their learning disability. Moreover, further study is needed to determine how many DAEPs have effective programs for addressing misbehavior that are based on research, such as positive behavioral supports and individualized education plans for special education students as required by law. When students are expelled from a DAEP for serious and persistent misbehavior, they either go to a JJAEP which costs taxpayers more than \$100 a day or, in counties without a JJAEP, to the street where they are not educated and are likely to get into trouble.

Policymakers should also consider making suspension to a DAEP discretionary instead of mandatory for possession of alcohol and abuse of volatile chemicals, such as glue and correction fluid. A high school student with a beer can in the trunk of his car, parked in the school lot could be disciplined in ways other than

being sent to a DAEP, which tends to disrupt academic progress. An excessively broad statutory definition of behavior that must result in a suspension precludes local disciplinary decisions based in such situations based on the unique facts of the case, including whether it was an isolated incident or part of a pattern of misbehavior.

In sum, schools must do more than simply pass the buck to parents, law enforcement, the juvenile justice system, and ultimately future victims and taxpayers.

Recommendations

Simply stating that disciplinary action in schools leads to juveniles in the justice system is inaccurate, the phenomena has many more parts that have not been explored in this report. Texas has taken steps to increase the safety and productivity in schools; while attempting to preserve some local control. Chapter 37 of the Education Code has been amended in the past to compensate for needless criminalization of our youth. Improvements to the current system are still needed to ensure that schools remain safe and productive, while ensuring youth are not needlessly being exposed to the justice system, especially when other alternatives would be more appropriate and achieve a better outcome. The following are the recommendations of this committee:

1. Amend Chapter 37 of the Education code by narrowing the definition for "Disruptive Activities", "Disruption of Classes", "Serious and Persistent Misbehavior" to eliminate non-criminal acts.
2. Amend Chapter 37 of the Education Code by changing the dangerous or disruptive violation to dangerous and disruptive, In order to insure students are not being removed for simple disruptions to class.
3. Require TEA to evaluate and modify education standards at DAEPs and JJAEPs.
4. Require TEA to notify school districts of disproportionate referrals.
5. Require TEA to develop a tracking system for the funds generated by citations.
6. Require an evaluation of district with continued disproportionate referrals.
7. Require school district to implement some form of evidence based programs that are proven to reduce truancy, crime, and drug offenses.
8. Decriminalization of truancy. Texas youth should be in school and should be held accountable; however, not by the justice system. Parents, schools and schools district should implement best practices for addressing truancy. The state may offer some incentive to district for improved attendance.
9. Require more training for teachers and administrators in discipline in a educational setting, and early intervention options.
10. Require the state auditor to evaluate the use of dropout funds by TEA.
11. Adjust statute to ensure all juvenile tickets are removed from municipal court to juvenile courts in order to increase consistency.

Interim Charge Ten

Evaluate the usage of current Texas practices for facilitating the fair and accurate courtroom testimony of children and reducing the trauma associated with testifying, particularly for children who are victims of sexual abuse. Specifically consider recent efforts and trends across the nation to develop best practices, including "court orientation" programs, and ensure that courtrooms are more child friendly and accommodating for young victims to reduce the trauma associated with testifying in court while ensuring that fair and accurate information is solicited from the child as a witness.

Introduction

The Senate Criminal Justice Committee conducted a public hearing on this charge on May 13, 2010. Invited testimony was provided by Michelle Voirin, Chief Felony Prosecutor, Collin County District Attorney's Office; Dan Powers, Senior Vice President, Texas Children's Advocacy Centers - Collin County; Keith Hampton, Legislative Co-chair, Texas Criminal Defense Lawyers Association; and Pam Hobbs, Manager, Harris Co. Children's Court Services. Public testimony was provided by Kathy Eyring, Child Advocate, Fort Bend Children's Advocacy Center; and Liz Kromrei, Director of Services, Department of Family & Protective Services - Child Protection Services.

It can be stressful for anyone who has been victimized to testify in court. This is true for adults and especially true for children who are victims of abuse. Recent trends across the nation have shown that court orientation programs specially designed for children can have extremely beneficial effects in reducing the stress of testifying while simultaneously promoting honest testimony. It is important to make children as comfortable as possible and to elicit honest testimony, but not at the expense of defendants' rights. The emphasis of many orientation programs is on telling the truth, first and foremost.

Discussion and Testimony

Invited Testimony

Michelle Voirin, Chief Felony Prosecutor, Crimes Against Children Division, Collin County District Attorney's Office and Dan Powers, Senior VP of Clinical Administrative Services, Texas Children's Advocacy Center - Collin County, together, described Collin County's court orientation program - "Kids in Court" - for abused children who will be testifying in court. Voirin emphasized the shared philosophy of the court to not only advance the judicial process through children's testimony, but also to empower children through their testimony. Voirin stated that the greatest fear for children in the judicial process is not discussing past abuses, but the fear of how their testimony might be received. In order to reduce that fear, it is important to familiarize children with the players in the judicial system early on in the legal process. Voirin stressed that one of the key points of emphasis of the orientation program is for the child to tell the truth. According to Voirin, reducing the child's responsibilities to simply telling the truth has been successful in reducing the anxiety associated with testifying in court. Voirin then

recommended that children testifying in trial have a private, secluded area to wait before and after testifying to further alleviate the stress associated with testifying.

Keith Hampton, Legislative Co-Chair, Texas Criminal Defense Lawyers Associations testified that other counties have similar child court orientation programs like Collin County. Hampton also stated that the statute regarding videotaped testimony needs to be revisited.

Pam Hobbs, Manager, Harris County Children's Court Services testified that the program works with children who are victims of crime, and assists in preparing children who will be witnesses in criminal trials. Hobbs stated that the large size of the Harris County jurisdiction and high number of cases makes a group orientation process, like that used in Collin County, impractical. Individual children's advocates are assigned to each case, orient the children one-on-one, and accompany them to court. Hobbs echoed the testimony of Voirin and Powers, stating that the main point of emphasis in her program is for the child to tell the truth. In addition to telling the truth, emphasis is placed on ensuring the child is comfortable and willing to say he/she does not know or remember, as well as saying they did not fully understand the question(s) being asked of them. Hobbs asked that child advocates be able to sit with or near the child when giving testimony in open court.

Public Testimony

Kathy Eyring, Child Advocate, Fort Bend Children's Advocacy Center described a case in which she was a child advocate for three young girls who testified in court against their adoptive mother. Eyring recommended increased training for prosecutors in child abuse cases and more funding for smaller jurisdictions.

Liz Kromrei, Director of Services, Department of Family & Protective Services - Child Protection Services submitted written testimony as a resource witness.

Recommendations

It can be stressful for anyone who has been victimized to testify in court. This is true for adults and especially true for children who are victims of abuse. Recent trends across the nation have shown that court orientation programs specially designed for children can have extremely beneficial effects in reducing the stress of testifying while simultaneously promoting honest testimony. In reviewing the matter, this committee recommends the following:

1. Require all jurisdictions to make good faith efforts to adopt "Best Practices" regarding testimony of children in court.

Interim Charge Eleven

Monitor the implementation of legislation addressed by the Senate Committee on Criminal Justice, 81st Legislature, Regular and Called Sessions, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Study the impact of certain provisions in the 2009 DPS Sunset bill on the timely processing of concealed handgun license applications and the issuance of licenses. Monitor and make recommendations, if needed, on actions by TDCJ to improve security and reduce contraband.

Concealed Handgun License Applications

During the 81st Legislative Session the 2009 Sunset bill concerning the Department of Public Safety's (DPS) backlog on the issuing and renewals of Concealed Handguns License was noted as a significant issue and addressed. The reorganization of DPS, along with the streamlining of the process, was mandated. DPS submitted the following written information:

Concealed Handgun License (CHL) Backlog Issues and Resolutions

CHL applications hit a peak in the spring of 2009. DPS brought in temporary employees during that summer to perform data entry services to expedite the application process. CHL staff also worked to streamline the application process during this time, and effectively eliminated the backlog by October 1, 2009. We continue to make improvements to the application process, including automating as many stages as possible.

During 2010, DPS has consistently been able to process 98% of the original CHL applications within the statutory timelines. In the last few months, a flaw in the processing of renewal applications was detected, but corrections are currently being put into place to address this issue. By the end of 2010, DPS expects the vast majority original and renewal applications to be processed timely. Until the transition to the new system is complete late next year, it is possible that a nominal amount of applications will not be processed within the timelines established, but CHL staffs are dedicated to minimizing that effect.

The below chart compares the number of CHL applications processed per fiscal year with the appropriations allocated and revenue generated.

Fiscal Year	Applications	Appropriations	Revenue
FY 2004	56,470	\$4,242,645	\$6,165,885
FY 2005	63,312	\$4,227,645	\$6,734,757
FY 2006	75,986	\$4,316,895	\$8,200,415
FY 2007	90,179	\$4,316,895	\$9,388,482

FY 2008	92,868	\$4,458,105	\$9,742,692
FY 2009	133,110	\$4,458,105	\$14,241,673
FY 2010	100,641	\$4,971,418	\$10,852,731

Actions by the Texas Department of Criminal Justice (TDCJ) to improve security and reduce contraband.

The 81st legislature approved funding for the TDCJ in the amount of ten million dollars for the purpose of additional security enhancements. This funding was in response to the agency's supplemental funding request targeted towards the purchase of security equipment that would enhance the agency's ability to combat contraband and other security threats at locations where contraband has been most prevalent.

The new funding provided the agency with several security technology enhancements to employ at many maximum-security facilities, to include:

- Body Orifice Security Scanner (BOSS) Chairs
- Walk Thru Metal Detectors
- Parcel Scanners
- Ingress/Egress Video Surveillance Systems

Additionally, the funding is being utilized to purchase comprehensive Video Surveillance Systems at the Polunsky, Stiles, Darrington, and McConnell units. The comprehensive systems, which have recording capability will greatly enhance the security monitoring for these facilities and provide state of the art video systems for these facilities. These locations were selected based on their history of contraband related issues.

The TDCJ has enhanced security with new policies and procedures to include:

- Initiated 24/7 pat searches of all individuals entering maximum security facilities.
- Initiated random pat searches of all individuals entering all other facilities.
- The agency implemented four search teams, comprised of 43 correctional staff to conduct comprehensive random searches of offender living and work areas; targeting those facilities where contraband interdiction is greatest.
- Search teams were supplied with micro inspection cameras, metal detectors, flexible retrieving tools and magnetic extending retrieval tools to assist in their comprehensive searches.
- The agency obtained ten canines for cell phone detection.

- The agency established stronger ties with the Texas Department of Public Safety (DPS) to facilitate additional information sharing and investigative assistance from DPS and the Texas Rangers.
- System-wide security audits of all units have been conducted to ensure that all facilities have the most recent reviews of their security procedures and adherence to security policies. Maximum security units are subject to security audits on more frequent intervals.
- A special evaluation of pre-service and in-service training focusing on areas such as offender search, offender manipulation tactics and transportation procedures was conducted. New training curricula related to this evaluation was implemented March 1, 2010. The new curricula enhanced training in areas such as offender, unit and cell search procedures.
- The agency implemented stronger correctional officer hiring standards and physical agility testing for prospective and current correctional officers in March 2010.
- Random drug testing was implemented for the majority of agency employees to include correctional officers and parole officers.
- Correctional officer staffing levels have improved significantly over the past two years and the staffing level at the end of Fiscal Year 2010 was 96.3%

Although contraband remains an ongoing challenge for the Texas Department of Criminal Justice as well as other correctional systems across the country, the agency's efforts combined with new security tools have helped to improve security and have assisted in combating contraband in the system. These enhancements provide an enhanced level of safety for staff and offenders within the system and help the TDCJ in meeting its overall mission.

Recommendation for the Control of Contraband

1. The agency should continue to review and adjust policies and procedures related to unit security and contraband detection and stay abreast of technology advancements such as the potential cell phone jamming technology which, if made legal could greatly enhance the agency's ability to address cell phone issues.

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Tuesday, November 10, 2009
10:00 a.m.
Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Tuesday, November 10, 2009, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Kel Seliger
Senator Rodney Ellis
Senator Glenn Hegar
Senator Juan Hinojosa
Senator Dan Patrick

MEMBERS ABSENT:

Senator John Carona

The chair called the meeting to order at 10:07 a.m. There being a quorum present, the following business was transacted:

The chair called invited testimony for the operational report on the Texas Forensic Science Commission.

The chair called invited testimony for the report on contraband within the Texas Department of Criminal Justice.

There being no further business, at 12:05 p.m. Senator Whitmire moved that the Committee be adjourned. Without objection, it was so ordered.

WITNESS LIST

Criminal Justice

November 10, 2009 - 10:00 AM

Contraband in the Texas Department of Criminal Justice

ON:

Livingston, Brad Executive Director (Texas Department of Criminal Justice), Huntsville, TX

Registering, but not testifying:

On:

Moriarty, John Inspector General (Texas Department of Criminal Justice- Office of the
Inspector General), Austin, TX

Operational Report for the Texas Forensic Science Commission

ON:

Bradley, John Presiding Officer (Texas Forensic Science Commission), Austin, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Thursday, April 29, 2010

9:00 a.m.

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Thursday, April 29, 2010, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Kel Seliger
Senator Rodney Ellis
Senator Glenn Hegar
Senator Juan Hinojosa

MEMBERS ABSENT:

Senator John Carona
Senator Dan Patrick

The chair called the meeting to order at 9:02 a.m. There being a quorum present, the following business was transacted:

The chair called invited and public testimony on interim charge 9, pertaining to the impact that secondary education school disciplinary laws and policy have on the juvenile and adult justice system..

The chair called invited and public testimony on interim charge 8, pertaining to the juvenile probation pilot programs aimed at community-based diversion of youth from the Texas Youth Commission.

The chair called invited and public testimony on interim charge 5, pertaining to the detention of juveniles offenders.

At 3:15 p.m. Senator Whitmire moved that the committee stand recessed subject to the call of the chair; without objection, it was so ordered.

WITNESS LIST

Criminal Justice

April 29, 2010 - 09:00 AM

Interim charge 5

ON:

Gay, Clifford (Self), Buda, TX

Levin, Marc Director, Center for Effective Justice (Texas Public Policy Foundation), Austin, TX

Livingston, Brad Executive Director (Texas Department of Criminal Justice), Huntsville, TX

Sampson, Stephanie (Self)

Smith, Jodie Public Policy Director (Texans Care for Children), Austin, TX

Townsend, Cheryl Executive Director (Texas Youth Commission), Austin, TX

Yanez-Correa, Ana Executive Director (Texas Criminal Justice Coalition), Austin, TX

Registering, but not testifying:

On:

Deitch, Michele Professor (Self), Austin, TX

Watkins, Dr. Richard Chairman (Criminal Justice Committee Texas State Conferences NAACP), Huntsville, TX

Interim charge 8

ON:

Anderson King, Jane Chief (Randall County JPD), Amarillo, TX

Brooks, Tom Interim Executive Director (Harris County JPD), Houston, TX

Kilcrease-Fleming, Desirree' Interim Assistant Chief (Dallas County JPD), Dallas, TX

Levin, Marc Director, Center for Effective Justice (Texas Public Policy Foundation), Austin, TX

Martin, James Chief Juvenile Probation Office (Jefferson County JPD), Beaumont, TX

Medina, Estela Chief Probation Officer (Travis County JPD), Austin, TX

Meyrer, Jeanne Senior Judge (Travis County JPD), Austin, TX

Perry, John Vice President (Juvenile Justice Association of Texas)

Smith, Jodie Public Policy Director (Texans Care for Children), Austin, TX

Spriggs, Vicki Executive Director (also providing written testimony) (Texas Juvenile Probation Commission), Austin, TX

Williams, Mark (Self), San Angelo, TX

Wilson, Dee Director of Reentry and Integration (also providing written testimony) (Texas Department of Criminal Justice), Austin, TX

Yanez-Correa, Ana Executive Director (Texas Criminal Justice Coalition), Austin, TX

Interim charge 9

ON:

Anderson, David General Counsel (also providing written testimony) (Texas Education Agency), Austin, TX
Aseltine, Elyshia Data Analyst (also providing written testimony) (Texas Appleseed), Austin, TX
Blanson, Archie Deputy Superintendent (also providing written testimony) (Aldine ISD), Houston, TX
Cruz, Rose Special Education Advocate (also providing written testimony) (Self), Laredo, TX
Du Four, Doots Director of Criminal Justice Ministry (also providing written testimony) (diocese of Austin), Austin, TX
Fowler, Deborah Legal Director (also providing written testimony) (Texas Appleseed), Austin, TX
Grant, Kathy (also providing written testimony) (Self), Houston, TX
Grey, John Government Relations Specialist (also providing written testimony) (Texas State Teachers Association), Austin, TX
Hartman, Eric Director of Government Relations (also providing written testimony) (Texas American Federation of Teachers)
Knipple, Ken Assistant Superintendent of Administration (also providing written testimony) (Aldine ISD), Houston, TX
Levin, Marc Director, Center for Effective Justice (Texas Public Policy Foundation), Austin, TX
Lewis, Ronald Board Member (Texas Appleseed), Houston, TX
Miller, Jeff Policy Specialist (also providing written testimony) (Advocacy Incorporated), Austin, TX
Moore, Adrian Executive Director (also providing written testimony) (Council on at Risk Children), Austin
Simpson, Matthew Policy Strategist (also providing written testimony) (American Civil Liberties Union), Austin, TX
Smith, Jodie Public Policy Director (Texans Care for Children), Austin, TX
Ward, Jeff President (also providing written testimony) (Texas Association of School Disciplinary Policy), San Antonio, TX
Watkins, Dr. Richard Chairman (also providing written testimony) (Criminal Justice Committee Texas State Conference NAACP), Huntsville, TX
Yanez-Correa, Ana Executive Director (also providing written testimony) (Texas Criminal Justice Coalition), Austin, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Thursday, May 13, 2010

9:00 a.m.

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Thursday, May 13, 2010, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Kel Seliger
Senator Rodney Ellis
Senator Glenn Hegar
Senator Juan Hinojosa

MEMBERS ABSENT:

Senator John Carona
Senator Dan Patrick

The chair called the meeting to order at 9:05 a.m. There being a quorum present, the following business was transacted:

The chair called invited and public testimony on interim charge 3, pertaining to the Fair Defense Act and the Task Force on Indigent Defense.

The chair called invited and public testimony on interim charge 10, pertaining to the current practices for facilitating the fair and accurate courtroom testimony of children and reducing the trauma associated with testifying, particularly for children who are victims of sexual abuse.

There being no further business, at 11:45 a.m. Senator Whitmire moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

WITNESS LIST

Criminal Justice
May 13, 2010 - 09:00 AM

Interim Charge 10

ON:

Powers, Dan Sr. Vice President (also providing written testimony) (Children's Advocacy Center), Plano, TX

Voirin, Michelle Chief Prosecutor, Crimes Against Children Division (also providing written testimony) (Collin County District Attorney), McKinney, TX

Registering, but not testifying:

On:

Kromrei, Liz CPS Director of Services (Dept of Family Protective Services, CPS), Austin, TX

Providing written testimony:

On:

Eye Ring, Kathy Child Advocate (CASA), Sugar Land, TX

Hampton, Keith Legislative co-chair (Texas Criminal Defense Lawyers), Austin, TX

Hobbs, Pamela Manager (Children's Court Services), Houston, TX

Interim Charge 3

FOR:

McCann, Patrick (also providing written testimony) (Self), Houston, TX

ON:

Allison, Jim General Counsel (County Judges and Commissioners Association), Austin, TX

Bethke, James Director (Task Force on Indigent Defense), Austin, TX

Blackburn, Jeff Chairman (State Bar of Texas, Committee on Legal Services to the Poor on Criminal Matters), Amarillo, TX

Fabelo, Dr. Tony Director of Research (also providing written testimony) (Justice Center, Council on State Governments), Austin, TX

Jefferies, Roger Executive Manager (also providing written testimony) (Travis County), Austin, TX

Keller, Sharon Chairman/ Judge (Texas Task Force on Indigent Defense), Austin, TX

Kinard, Jeanette Director (Travis Mental Health Public Defender), Austin, TX

Marsh, Andrea Executive Director (also providing written testimony) (Texas Fair Defense Project), Austin, TX

Yáñez-Correa, Ana Executive Director (Texas Criminal Justice Coalition), Austin, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Thursday, June 10, 2010
9:00 a.m. or upon adjournment
Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Thursday, June 10, 2010, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Kel Seliger
Senator Juan Hinojosa

MEMBERS ABSENT:

Senator John Carona
Senator Rodney Ellis
Senator Glenn Hegar
Senator Dan Patrick

The chair called the meeting to order at 9:05 a.m. The following business was transacted:

The chair called invited and public testimony on interim charge 1, pertaining to efficiency and fairness of the current sexual offender registry system.

The chair called invited and public testimony on interim charge 7, pertaining to the way the Commission on Jail Standards, The Department of Public Safety, the Department of Criminal Justice, and the department of State Health Services are working together to identify defendants with mental health issues.

There being no further business, at 2:05 p.m. Senator Whitmire moved that the Committee stand recessed subject to the call of the chair and instructed the clerk to read into record the names of those providing written testimony for interim charge 1. Without objection, it was so ordered.

WITNESS LIST

Criminal Justice
June 10, 2010 - 09:00 AM

Interim Charge 1

FOR:

Johnson, Charles (Self)
Marsilia, David (Self), Liberty, TX
Tircuit, Kevin (Self), Houston, TX
Wielder, Freddie John (Self), Alvin, TX

AGAINST:

Buhrig, Herman (Self), Austin, TX
Calderon, Richard (Self), Austin, TX
Caldwell, Samuel (Self), Round Rock, TX
Elam, Beverly (Self), Rockwell, TX
Fewell, Jon (Self), San Marcos, TX
Jones, James (Self), Colleyville, TX
Montgomery, Carrol (Self), Sachse, TX
Montgomery, Janice (Self), Sanchse, TX
Risler, Lisa (Self), Trinity, TX
Ritchie, Esther (Self), Palm Beach, FL
Smith, Donovan (Self), Austin, TX
Swisher, Anne (Self), Argyle, TX
Taylor, Philip (Self), Dallas, TX
Torres, Nora (Self), Rosharon, TX
Wong, Hui-Kee (Self), Houston, TX

ON:

Anderson, Katha (Self), Pflugerville
Arnold, F. Liles (Council on Sex Offender Treatment)
Ferrara, Matthew PH .D (Council on Sex Offender Treatment), Austin, TX
Fisher, Nancy (Self), San Antonio, TX
King, Kelly Victim (Self; Justice For sex Crime Victims), Austin, TX
King, Ken Founder (Justice For Sex Crime Victims), Austin, TX
Losue, Diane (Self), Round Rock, TX
Lunt, Mary (Self), Boerne, TX
Marsilia, Stephanie (Justice For Sex Crime Victims), Liberty, TX

McCraw, Steven Director (TX Department of Public Safety), Austin, TX
Moss, Greg Lt. (Austin Police Department), Austin, TX
Robles, Carlos (Self), Austin, TX
Rosenthal, Janay Bender (Self), Dallas, TX
Runkle, Kristin Legislative Council (Texas Legislative Council)
Taylor, Allison Executive Director (Council on Sex Offender Treatment), Austin, TX
Tucker, Jerome (Self), Cedar Park, TX

Registering, but not testifying:

For:

Garza, Victoria (Justice for Sex Crimes Victims), Austin, TX
Kugle, David (Self), Austin, TX
Kugle, Josephine Ann (Self), Austin, TX
Watkins, Martina (Self), Austin, TX
Watkins, Samuel (Self), Austin, TX

Against:

Cannon, Cathy (Self), Weatherford, TX

Cannon, Gerry (Texas Voices), Weatherford, TX
Iosue, Diane (Self), Round Rock, TX
Richards, Katie (Self), Odessa, TX
Summerour, James member (Texas Voices)

On:

Aubrey, Rebecca (Self), Leona, TX
Carden, Sharon (Self), Houston, TX
Martin, Toysha (Self), Austin, TX
Maunder, Donald (Self), Ft. Worth, TX
Postel, Lawrence (Self), Fort Worth, TX
Williams, Belva (Self), San Antonio, TX

Providing written testimony:

For:

Grottalio, Michael (Self), Weatherford, TX
Illrey, Wanda (Self), Victoria, TX

Against:

Flowers, Tracy (Self), Kerrville
Heflin, Maria (Self), McAllen, TX

Lee, John (Self), Houston, TX
Meyers, Mary Glenn (Self), Grapevine, TX
Risler, Frederick (Self), Trinity, TX
Robinson, Jim (Self), Woodway, TX
Robinson, Sherry (Self), Woodway, TX

On:

Camp, Torie Deputy Director (Texas Association Against Sexual Assault), Austin, TX
Clark, Jacalyn (Self)
Kennard, Alvin (Self), Dallas
Maddox, Erica (Self), Centerville, TX
Woodham, Susan (Self), Austin, TX

Interim Charge 7

ON:

Levin, Marc Director, Center for Effective Justice (Texas Public Policy Foundation), Austin, TX
Lovelace, Joe Associate Director of Behavioral Health (Texas Council of Community Mental Health and Mental Retardation Centers), Austin, TX
Luna, Maria Elena (Self), Wimberley, TX
Maples, Mike Assistant Commissioner (Department of State Health Services), Austin, TX
Munoz, Adan Executive Director (Texas Commission on Jail Standards), Austin, TX
Streman, Brent Police Chief (Waco Police Department), Waco, TX
Wilson, Dee Director of Reentry and Integration (Texas Department of Criminal Justice), Austin, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Thursday, July 8, 2010

9:00 a.m.

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Thursday, July 8, 2010, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Kel Seliger
Senator Rodney Ellis
Senator Glenn Hegar
Senator Juan Hinojosa
Senator Dan Patrick

MEMBERS ABSENT:

Senator John Carona

The chair called the meeting to order at 9:05 a.m. There being a quorum present, the following business was transacted:

The chair called invited and public testimony on interim charge 2, pertaining to the statistics regarding the crime of driving while intoxicated, including accident statistics, alcohol-related deaths and injury, and other impacts on the community. In addition the committee examined enforcement options used nationwide to deter driving while under the influence and recommendations made to reduce the number of alcohol-related traffic fatalities and accidents in Texas.

There being no further business, at 12:40 p.m. Senator Whitmire moved that the Committee be adjourned. Without objection, it was so ordered.

WITNESS LIST

Criminal Justice

July 8, 2010 - 09:00 AM

Interim Charge 2

FOR:

Hill, Laretta Deputy Chief (also providing written testimony) (City of Arlington), Arlington, TX

Jimenez, Edward (Self), San Antonio, TX

McAfee, Jamie (Self), Burnet, TX

AGAINST:

Lewis, Bill Public Policy Liaison (also providing written testimony) (Mother Against Drunk Driving), Argyle, TX

ON:

Acevedo, Art Chief of Police (also providing written testimony) (Austin Police Department), Austin, TX

Allen, Kristi Director of Coalitions (Community Coalitions of Greater Houston), Houston, TX

Bratcher, Scott Lieutenant (also providing written testimony) (Dallas Police Department), Dallas, TX

Chatham, Donna (Self), Cedar Park, TX

Edmonds, Shannon (Texas District And County Attorneys Association), Austin, TX

Hibbs, Brittany Public Policy Liaison (also providing written testimony) (Texans Standing Tall), Austin, TX

Hodges, David Judicial Liaison (also providing written testimony) (Texas Center for the Judiciary), Austin, TX

Hughes, Jean Judge (County Criminal Courts), Houston, TX

Lassalle, Paul Senior Police Officer (also providing written testimony) (Houston Police Department), Houston, TX

Leineweber, Glenn (Self), Canyon Lake, TX

Mayfield, Kenneth County Commissioner (Dallas County & Dallas County DWI Task Force), Dallas, TX

McCraw, Steven Director (TX Department of Public Safety), Austin, TX

Pinney, Leah Fair Defense Director (also providing written testimony) (Texas Criminal Justice Coalition), Austin, TX

Waldrip, Dib Judge (433 rd Judicial District Court), New Braunfels, TX

Registering, but not testifying:

On:

Cooper, Kevin Legislative Liaison (TX Police Chiefs Association), Austin, TX

Providing written testimony:

For:

Adams, Vickie (Self), New Braunfels, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Tuesday, September 7, 2010

10:00 a.m.

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Tuesday, September 7, 2010, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Joan Huffman
Senator Glenn Hegar
Senator Dan Patrick

MEMBERS ABSENT:

Senator John Carona
Senator Rodney Ellis
Senator Juan Hinojosa

The chair called the meeting to order at 10:05 a.m. There being a quorum present, the following business was transacted:

The chair called invited and public testimony on interim charge 6, pertaining to the accuracy and timeliness of testing done in Texas forensic laboratories, including DNA and blood/alcohol testing.

The chair called invited and public testimony on interim charge 4, pertaining to municipal jails and other detention facilities that operate without state agency oversight.

At 12:11 p.m. Senator Whitmire moved that the committee stand recessed until next called meeting; without objection, it was so ordered.

WITNESS LIST

Criminal Justice

September 7, 2010 - 10:00 AM

Interim Charge 4

ON:

Barber, Dave Police Chief (Texas Police Chiefs Association), Houston, TX
Braaten, Timothy Executive Director (Texas Commission on Law Enforcement
Officers, Standards, and Education), Austin, TX
Dougherty, Patrick Lieutenant (City of Houston Police Department), Houston, TX
Heklotz, Shannon Assistant Director (Texas Commission on Jail Standards), Austin,
TX
Klaeger, Donna Burnet County Judge (Texas Commission on Jail Standards), Burnet,
TX
Spivey, Kristin Director, Board of Directors (Municipal Jail Association of
Texas), Dallas, TX
Wood, Brandon Assistant Director (Texas Commission on Jail Standards), Austin,
TX
Yanez-Correa, Ana Executive Director (Texas Criminal Justice Coalition), Austin,
TX

Registering, but not testifying:

Against:

Fiorello, Frank Technical Service Coordinator (North Richland Hills Police), North
Richland Hills, TX

Providing written testimony:

Against:

Kerbow, Russell Chief of Police (City of Lewisville), Lewisville, TX
Rushin, Gregory Police Chief (City of Plano), Plano, TX

Interim Charge 6

ON:

Boschwitz, Jeff Vice President (Orchid Cellmark), Princeton, NJ
Fallon, Timothy Director (Bexar County Crime Laboratory), San Antonio, TX
Lykos, Patricia District Attorney (Harris County District Attorney), Houston, TX
McCraw, Steven Director (TX Department of Public Safety), Austin, TX
Rios, Irma Crime Lab Director (Houston Police Department), Houston, TX
Sliter, PH.D., Timothy (Texas Association of Crime Lab Directors), Dallas, TX